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UNIFICATION OF THE BAR IN INDIA

Salient Features of and Vital Lacunae in the Bill as Reported by the Joint Select Committee

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The Report of the Joint Committee on the Bill to amend and consolidate the law relating to Legal Practitioners and to provide for the constitution of State Bar Councils and an All-India Bar was presented to the Lok Sabha on the 28th March, 1960. The Committee consisted of 45 members of Parliament, 30 from the Lok Sabha and 15 from the Rajya Sabha. Shree C. R. Patabhi Raman, a Senior Advocate of the Supreme Court, was appointed its Chairman. Twenty-five memoranda/representations on the Bill were sent by different associations and individuals. Oral evidence, however, was not recorded by the Committee. The Committee held in all 10 sittings. The first sitting was held on 18th December, 1959 and the final sitting on 21st January, 1960. On the last date the report of the Committee was considered and adopted.

The Bill was introduced in the Lock Sabha on the 19th November, 1959. The salient features of the Bill in the light of the recommendations of the Joint Select Committee are given below :—

(i) Since there will be only 'one' class of legal practitioners hereafter, *viz.*, Advocates, the proposed enactment may appropriately be called the "Advocates Act of 1960", instead of the "Legal Practitioners' Act." It will extend to the whole of India, except the State of Jammu and Kashmir.

(ii) As Delhi, the seat of Supreme Court of India, has assumed special importance in the legal profession, it will have a separate Bar Council.

(iii) The Committee are of opinion that the Bar Councils should be fully autonomous bodies and as such Judges should not be represented thereon. They have therefore dropped the representation of High Court Judges on the State Bar Councils and of Supreme Court Judges on the Bar Council of India.

(iv) (*a*) The strength of elected members of the State Bar Councils is to be increased from 10 to 15 in case of Assam and Orissa. Delhi Bar Council will have also 15 elected members. The strength of the other State Bar Councils is raised from 15 to 20.

(*b*) In case of Delhi, the Additional Solicitor-General of India and in case of the State Bar Councils, the Advocate-General of the State, will be Ex-Officio members.

(*c*) Every State Bar Council will be represented by one member on the Bar Council of India. The distinction made in the original Bill for larger representation between States which have a large number of Advocates and those which have a small number of Advocates has been removed.

(v) The Bar Council of India will accordingly be composed of one representative from each State Bar Council, including the Delhi Bar Council. The Attorney-General of India as also the Solicitor-General of India will be the Ex-Officio members of the All-India Bar Council.

(vi) The Chairman and Vice-Chairman of both the State Bar Councils and the Bar Council of India will be elected by the respective Bar Councils in such manner as may be prescribed by rules made under the said Act.

(vii) In order to ensure representation to all shades of opinion, the mode of election to the State Bar Councils will be in accordance with the system of proportional representation by means of a single transferable vote.

(viii) In view of the above recommendation that election will be in accordance with the system of proportional representation, it is not necessary to give special representation to Advocates practising on the Original Side of the Bombay and Calcutta High Courts, on the respective Bar Councils, as previously provided in the Bill on the plea of their being in a 'minority'.

(ix) Since there will be a separate Bar Council for Delhi as stated in para. (ii) above, special representation given to the Supreme Court Bar Association on the Bar Council of India has been omitted.

(x) The functions of the State Bar Councils have been enlarged. They will now include, (*a*) Safeguarding of rights, privileges and interests of Advocates on the roll, (*b*) Promotion and support of law reform and (*c*) Constitution of a Fund for givings financial assistance to indigent and disabled Advocates.

(xi) An Advocate will not be enrolled on the roll of more than one State Bar Council, but an Advocate already on the roll of one High Court will have the option to enroll himself on the State Bar Council within whose jurisdiction he proposed to practise. He will have, however, the right to get his name transferred from one State roll to another on account of his changing the venue of his practice. (At present the enrolment of Advocates is done by the High Courts, but on this Bill becoming law, this power of enrolment will be delegated to the State Bar Councils).

(xii) The seniority of a Vakil, Pleader or an Attorney who is enrolled as an Advocate, whether before or after the commencement of this enactment, will be determined according to the date of his entry in the register of Vakils, Pleaders or Attorneys. The time limit for their applying for enrolment as an Advocate on the State roll is extended from one year to two years on the Act coming into force.

(xiii) Besides obtaining a degree in Law, a course of practical training will be made compulsory for new entrants to this profession, but no additional qualification of a degree in Arts, Science or Commerce will be necessary for enrolment as an Advocate.

(xiv) The enrolment fee to be paid to the State Bar Council is reduced from Rs. 500 as originally proposed to Rs. 250.

(xv) As regards disciplinary action for misconduct against an erring Advocate, in addition to an appeal to the Bar Council of India from the order of the Disciplinary Committee of the State Bar Council, an appeal to the Supreme Court of India from the order of the Disciplinary Committee of the Bar Council of India, is made available to the Advocate concerned within 60 days from the date on which the said order is communicated to him.

(xvi) Clause 52 (a new clause added) makes it clear that the power of the Supreme Court to make rules under Article 145 (*a*) of the Constitution of India in respect of persons practising before that Court is not affected.

Some clauses of the original Bill have been redrafted and rearranged. Five new clauses have been added which bring the total number of clauses to 57.

It will be seen from the above that as a result of the deliberations of the Joint Select Committee, the Bill has been considerably improved in several respects, *e.g.*, (i) Bar Councils have been made fully autonomous bodies, (ii) Proposal for the reservation of seats on the Bar Councils has been dropped, (iii) Representation given to the Supreme Court Bar Association has been omitted, (iv) Functions of the State Bar Councils have been enlarged, (v) enrolment fee of an Advocate is reduced from Rs. 500 to Rs. 250. (vi) Provisions relating to the seniority of Vakils, Pleaders and Attorneys and of transferring names of Advocates from one State roll to the other have been clarified and (vii) An appeal to the Supreme Court of India in disciplinary matters, has been provided for.

It may be mentioned that in view of the bifurcation of the State of Bombay into two States of Maharashtra and Gujarat, the words "Maharashtra" and "Gujarat" in place of "Bombay" will have to be inserted in section 3 (1) (*a*) dealing with the formation of the States Bar Councils.

It may be stated here that there is no indication in the Objects and Reasons of the Bill why it should not be made applicable to the State of Jammu and Kashmir. The jurisdiction of the Supreme Court of India has been extended to that State and it would be proper if provisions of the proposed Act are made applicable to the said territories as they are an "intergal part of India".

It is interesting to note that one of the members of the Committee, Shree W.S. Barlingay, in a separate note, which is not a minute of dissent, has sugested that Bar Councils created by this Bill should take active steps to see that (i) legal work should be distributed amongst its members as equitably as possible and that (ii) every member of the profession is assured of a decent standard of living. These are, no doubt noble sentiments, but they are hardly practicable under our so-called Democratic State, where as the Hon'ble Member himself realizes, the doctrines of *laissez faire* and individual liberty go hand in hand. These ideas have, however, been put into practice mostly under Communist dispensation.

This brings us to the six minutes of dissent, appended to the Report by different members. They deal with vital lacunae in the Bill, *e.g.*, (i) Retention of heavy stamp duty for granting of Sanad to Advocates, (ii) Continuance of Dual System in the two High Courts at Bombay and Calcutta, (iii) Exclusiveness in the Bar, (iv) Provision enabling Barristers to enroll as Advocates without providing for reciprocity and (v) Provision for compulsory examination for being qualified for enrolment as an Advocate, etc. The first three of these lacunae being quite inconsistent with the avowed object of the said Bill, require further deliberation.

A person desirous of obtaining a Sanad to practise as an Advocate is, under the Stamp Act, required to pay a varied enrolment fee ranging from Rs. 10 to Rs. 100 to the Bar Council of which the person concerned desires to be a member. Under the proposed Act the enrolment fee has been definitely increased and fixed at Rs. 250.

The result will be that the Vakils and Pleaders practising in the mofussil Courts as also new entrants to this profession will be compelled to pay a large amount of money (stamp duty and enrolment fee) varying in different States as stated above.

According to one estimate, there were 26,495 Advocates and 39,632 Vakils and Pleaders in India in or about the year 1953 (*vide* minute of dissent of Shree Bakshi Tekchand appended to the Report of the All-India Bar Committee, 1953, at pages 43-44). This vast number of Vakils and Pleaders would be surely affected by this top-heavy payment of money for being enrolled as Advocates. A majority of those 39 thousand and odd number of legal practitioners would certainly find it extremely difficult, if not impossible to incur this prohibitive expenditure and would thus be indirectly prevented from getting themselves enrolled as Advocates. This would definitely militate against the cherished object of the Bill, *viz.*, Unification of the Bar at All-India level, for the simple reason that the State Bar Councils and the All-India Bar Council will remain open to the Advocates who are already on the roll of Bar Councils of the various States and to the Supreme Court Advocates and the fortunate few among the Vakils and Pleaders and new entrants who would be able to incur the heavy cost of enrolment.

The Joint Select Committee have expressed doubt that a provision in the Bill to abolish the stamp duty payable for obtaining Sanad to practise at the Bar may be of doubtful validity in view of the distribution in the Constitution of legislative powers relating to Stamp Duty, but have, at the same time recommended that State Governments might be persuaded to take such action as may be necessary so that no stamp duty in addition to the fee payable to the Bar Councils under this Bill is levied at the time of admission of Advocates.

Three dissident members of the Committee, Messrs. Hemraj, Santoshkumar Basu and S. C. Gupta have therefore in their minutes of dissent justly voiced their dissatisfaction against the attitude of helplessness shown by the majority in the Committee. They point out that the Centre has powers to legislate on the subject under some Entries under the Union and Concurrent Lists, which should be invoked to abolish the stamp duty. Leaving the matter to the discretion or rather the mercy of the States would not serve the purpose ; for the States would not be ordinarily amenable to forego this item of revenue easily available to them, for the recovery of which they have not to exert or incur any expenses. Hence the matter should not be allowed to rest as a mere recommendation. A way must be found out to abolish the exorbitant stamp duty, which is at present recovered from the entrants to the legal profession. The Law Commission have also remarked *inter alia* on this point as under :—

" We have not been able to discover any sound reason or principle for this levy (the stamp duty)......In our view this imposition is totally unjust and should be abolished ". (Fourteenth Report on Reform of Judicial Administration, Vol. I, at pages 574-575).

The most vital issue, however, on which the Committee has disappointed the people and persons in the legal profession in general in their expectations, is their omission to recommend the abolition or even modification of what is known as the "Dual System" prevalent on the Original Sides of the High Courts of Bombay and Calcutta. This system is wholly repugnant to the idea of a unified Bar with a common roll of Advocates entitled to practise in all Courts. The compulsory retention of the said system keeps the legal practitioners divided into two distinct classes of lawyers, *viz.*, Advocates and Solicitors in principle as well as in fact. This is really inconsistent with the fundamental object and *raison de etre* underlying the Bill. While the Bill was on the anvil of the Committee, it was at one stage thought that the Committee would, by a majority, recommend the abolition of the Dual System, but it appears that the "vested interests" prevailed and the tables were turned,

with the result that the Committee has by a majority retained the clauses relating to the Dual System as they appeared in the Bill leaving its abolition or its retention to the will of the respective High Courts. With all due respect to them, the Joint Select Committee have in doing so shirked their responsibility and put the High Courts concerned in an embarrassing position by putting this burden on them.

It cannot be gainsaid that this Dual System is a vestige and legacy of the Imperial Foreign Rule. Even its staunch protagonists are not able to advance any cogent or convincing argument for its retention beyond that it results in efficient preparation of the brief and presentation of the case. This efficiency is also to be found where there is a division of work as between a Senior and a Junior Advocate. As such there is no special merit attached to the Dual System. Assuming it has such a merit, it should be allowed to survive on its own merits and not be imposed under duress.

That it is helpful and suitable to commercial litigation in industrial cities of Bombay and Calcutta is one of the grounds on which continuance and retention of the Dual System is sought for. But in India, Bombay and Calcutta are not the only two Urbs Prima. Madras, Kanpur, Ahmedabad, Nagpur and some more cities are big industrial centres. In Kanpur and Nagpur the Dual System was never introduced. In Madras it is not in vogue since the year 1886. The administration of justice has not in any way deteriorated in those places in spite of absence of the Dual System.

Speaking about Bombay, it is not now a small City and Island covering a small area of about a few square miles as it existed before the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act XVII of 1945. It is now Greater Bombay, extending on one side upto Dahisar (B.S.D.) on the Western Railway and on the other upto Mulund on the Central Railway. The vast area now coming under the Ordinary Original Civil Jurisdiction of the Bombay High Court has very little to do with commercial litigation which is proportionately small compared to other litigation. Besides, the Dual System involves greater costs and delay in the prosecution of suits. Therefore if at all it is to be retained, it should be allowed to function optionally and not foisted upon compulsorily. India is a poor country. People therein are still poorer. They cannot afford the luxury of the Dual System. It is moreover unsuited in a 'Socialistic Pattern of Society', where the crying need is to make justice cheap, speedy and simple.

In summary suits, in undefended causes and in simple cases the Dual System is at any rate a needless luxury and it is hard on litigants to insist upon employing two sets of lawyers working in water-tight compartments. It is the common experience of all concerned that most of the suits are settled before they become ripe for hearing or at the date of hearing ; the money, energy and time spent in preparing the case could well have been utilised for a better purpose. It cannot also be said that this system works at present as suitably as in England. There is enormous waste of talent and nepotism in common.

The Dual System further violates the principle of equality of status and opportunity in the Bar in as much as in other High Courts, the Advocates are both entitled to act as well as to plead. However, in Bombay and Calcutta High Courts they are denied the opportunity and privilege to act on their own on the Original Side. The main idea of having a common roll is that every legal practitioner should have identical right to practice in all the Courts from the highest to the lowest in the country.

The Bill classifies Advocates into senior Advocates and Advocates, the former of whom will not be required to give notices of suits, drafting pleadings, preparing briefs for conducting cases and other spade work, which will be left to the Advocates. The senior Advocates will only appear and plead. It will thus be seen that there

is no propriety in retaining the expensive Dual System and preserving a separate class of legal practitioners known as Solicitors.

The 'Dual System' as it subsists on the Orginal Side of the two High Courts of Bombay and Calcutta cannot be compared with the system at present prevalent in the Supreme Court of India, wherein the Advocate on record can, not only act, but also plead, for his client. For securing the right to act in the Supreme Court of India, what the Advocate on record is required to do is to maintain an office within a radius of 10 miles from the Court, employ a clerk and pay registration fee of Rs. 25 only and also to undergo a test. There are distinct advantages in the Supreme Court practice and procedure. An Advocate can with ease interchange his position if he so desires. There is no water-tight compartment as is found in the Dual System. If, however, any restrictions or safeguards are found necessary to secure payment of costs to the successful party to the litigation, rules to that effect may be framed, instead of imposing the top-heavy Dual System on the litigant public.

It is really surprising that for the sake of maintaining the said bloated system in the said two High Courts, the Committee have taken a retrograde step of recommending the repeal of the Supreme Court Advocates' (Practice in High Courts) Act, 1951, interpreted by the judgment of the Supreme Court in *Ashwinikumar's Case*[1], whereby all Supreme Court Advocates were permitted to both act and plead on the Criminal Side of the Bombay and Calcutta High Courts without being instructed by a Solicitor. The Committee in doing so, have retraced a step backward instead of going forward. Is it not taking away a valuable right given to a Supreme Court Advocate, thus infringing his fundamental right under the Indian Constitution?

Three members of the Committee, Messrs. S. K. Basu, S.C. Gupta and B. D. Khobergade have recorded their strong protest and dissatisfaction against the retention of the Dual System by the majority verdict of the Committee and suggested either its abolition or in the alternative its modification on the grounds most of which have been considered in the foregoing paragraphs. These members have thus voiced the general consensus of opinion of the litigant public and the legal profession, which deserves to be given due consideration by our Parliament.

Although the Committee have left the question of the "Dual System" to the High Court of Bombay and Calcutta, they have strongly disapproved and therefore have recommended abolition of what they have termed as a very undesirable practice found in certain High Courts of members of the Bar forming themselves into different groups with separate associations and exclusive rooms in High Court buildings. It would have been in fitness of things that when reporting on the Bill, they should have also recommended abolition of the Dual System, so that the unwholesome practice of separationist tendency which they have described as undesirable practice would have automatically disappeared.

It is known that this exclusiveness had its origin in the policy of racial segregation or discrimination adopted by the ruling British race, when the Dual System was first 'introduced' in the then Supreme Court at Calcutta under the aegis of the East India Company since the year 1776 on the same pattern as it then existed in Britain, for the convenience of the White people. The Dual System got firmly imbedded in the three Presidency Towns of Bombay, Madras and Calcutta, when Chartered High Courts were established in those towns in or about the year 1861. Even then the Original Sides of those High Courts remained the sole preserve of the Solicitors and Barristers of British origin. Indian Vakils and Mukhtyars were restricted in their practice on the Appellate Sides of those High Courts and in moffusil Courts only. Gradually, however, the monopoly of the Barristers and Solicitors of British origin to practise on the Original Sides of the said High Courts disintegrated and Indian Solicitors as also Indian Barristers and Advocates (O.S.) were

1. (1953) S.C.R. 1 : (1952) S.C.J. 568.

permitted to practice there. Although the racial discrimination in the Bar gradually and disappeared as time passed on, the invidious distinction and segregation between the Original Side Bar and the Appellate Side Vakils continued and they remained divided into two distinct groups as before. In this connection the Law Commission has observed in their Report of 1958, Vol. I, at page 560, as follows:—

"This division into groups seems to owe its origin to the division between Advocates and Vakils which prevailed in the Calcutta and some other Bars. The Advocates who mainly practised on the Original Side were members of the English Bar—both Englishmen and Indians, and they formed themselves into Bar Associations or Bar Library Clubs and segregated themselves from Vakils, who had their own Associations. These Associations were probably started by members of the English Bar, who, for a considerable number of years, had made the Original Sides of the High Courts their exclusive preserve. Indeed it was for a considerable time believed by the litigating public that the Barristers who formed those associations were a type of lawyers superior to the vakils who had Indian qualifications".

This odious distinction between the two Bars in the Bombay and Calcutta High Courts was again nurtured when the Dual System was given a further lease of life and reservation of seats for Barristers and Advocates (O.S.) was provided in the Indian Bar Councils' Act, 1926, in teeth of opposition from Nationalist opinion in the country. (*Vide* Legislative Assembly Debates on the Indian Bar Councils' Bill, August and September, 1926). The Dual System and differentiation between the two Bars thus go hand in hand. In Bombay the Bar, Appellate Side and Original Side, was unified since November, 1949 and the reservation of seats on the Bar Council has been rightly abolished by their Lordships of the Bombay High Court now. Still the Bombay High Court remains largely separated into two distinct groups, represented by the Advocates' Association of Western India and the Bombay Bar Association, It is high time that both these Associations are amalgamated into one Association styled as the "High Court Bar Association, Bombay", with a right to every Advocate to become its member if he so desires. In Calcutta, where the Dual System is more rigid, the Bar Library Club has still the audacity to preserve its isolation by denying its membership to the non-Barrister Indian Advocates, however qualified they may be. It is reported that a writ petition has been filed in the Supreme Court of India against such exclusiveness, the result whereof is awaited with interest.

It will not be out of place to quote here the observations of the Law Commission made in their Report of 1958, Vol. I, at page 561 :

" We are living under a Constitution which enjoins equality before the Law. The Bar, throughout, it is hoped is about to attain its ideal of unification. The profession when united can rise to even greater heights of distinction and service. It is certainly anomalous that in these circumstances the Bar should still remain split into different groups. *Bar Associations should in our view be constituted for a Court or a group of Courts only and the membership of such Bar Associations should be open to all the Advocates practising in such Court or group of Courts and all the members of the Bar practising in a Court should be able to enjoy equally the privileges and amenities of these Associations.*" (Italics ours.)

We believe it can be achieved in practice if the Dual System is completely abolished. In High Courts, where the Dual System does not exist this evil practice of exclusiveness is hardly to be found. Here again, the Joint Select Committee have merely expressed a hope that " the authorities concerned would take early steps to put an end to it". If the matter is, however, left to the discretion of the Associations concerned or the respective High Courts, it will remain hanging indefinitely. Shree S. C. Gupta, one of the Hon'ble members of the Committee, has rightly suggested that legislative intervention seems necessary for its removal.

In conclusion, we may state that the Bill as it has emerged from the fire of the Select Committee's deliberations has shown a progressive trend particularly in one

respect, *viz.*, making the Bar autonomous. But in prolonging the Dual System they have completely failed to satisfy the aspirations of the persons affected by it as also of the litigating public. The retention of the Dual System in this progressive piece of legislation is like a blot on a nicely drawn picture. Another serious lacuna in the Bill is leaving the levy of stamp duty or its abolition at the time of granting Sanad to an Advocate to the mercy of the State Governments.

It may be pointed out lastly that the opportunity to legislate for legal profession is seldom offered to the Parliament. The proposed Bill is introduced after about 35 years when the existing Bar Councils' Act of 1926 came into force and after more than 10 years of attainment of Independence. Similar opportunity may not come for several years in future. We therefore trust that Hon'ble members of the Lok Sabha will carefully examine every issue when the Bill is placed before them for consideration in the ensuing sessions of the Lok Sabha, with a view to make the All-India Bar completely unified and the administation of justice uniform throughout India.

THE HON'BLE MR. JUSTICE K. SRINIVASAN.

Mr. K. Srinivasan, I.C.S., has been appointed a permanent Judge of the High Court and was sworn in on 27th June, 1960. The Hon'ble Mr. Justice Srinivasan is no stranger to Madras where he was born and grew up. He had his early education in the Hindu High School, Triplicane, and graduated in Mathematics Honours in the year 1928 from the Presidency College, Madras. He passed the I.C.S. examination in England in 1930 and served in the Revenue Department in the Madras Presidency for a few years. Later he had his judicial training in Madurai under the late Mr. N. Chandrasekhara Iyer, who became a Judge of the Madras High Court and later on a Judge of the Supreme Court of India. First appointed as District and Sessions Judge in 1941, he has served as such in several districts of the then composite Madras Presidency. He was then Chairman of the Sales Tax Appellate Tribunal Madras, for three years after which his services were availed of for the work of the Law Commission of the Government of India. As Secretary to the Law Commission he has done admirable work and was closely associated with the wing relating to Reform of Judicial Administration in the country. After completion of his work there, he was Secretary in the Ministry of Law, New Delhi, for a year from whence he has been appointed a permanent Judge of the Madras High Court.

Mr. K. Srinivasan comes to the Bench from the time honoured Indian Civil Service with a rich and varied experience in the field of law and administration of justice, both in the judicial and executive limbs of the Government. He has many years of service as Judge of the High Court and could feel legitimately proud of the high distinction he has achieved. Unassuming and gentle he has already endeared himself to the Bar and we are only voicing the general opinion of the members of the Bar that he will prove an asset to the Bench. After swearing in his Lordship took his seat on the Bench along with Mr. Justice Ananthanarayanan when he was welcomed by the Public Prosecutor, Mr. P.S. Kailasam. His Lordship in a brief reply solicited the co-operation of the Bar in the fullest measure in the discharge of his duties.

We wish his Lordship success in his new assignment and offer our hearty and sincere felicitations to him on this occasion.

UNIVERSITY OF CALCUTTA NOT TO BE REMOVED DEPARTMENT OF LAW

LAW OFFICES AND CLAIMS OF THE BAR

Addressing the members of the Madras Advocates' Association a fortnight ago Sri M. C. Setalvad, Attorney General of India, said "There is a tendency for politicians to encroach upon the proper standards in the matter of judicial appointments and in the matter of selections from the Bar. The result is merit is being cold-shouldered and nepotism is slowly and steadily gaining ground". He added "There is also a tendency in some States to choose even the Advocate General not by reason of his position in the Bar but for other adventitious causes." Sri C. K. Daphtary, Solicitor General of India who was also present at the meeting expressed his concurrence with the sentiments expressed by the Attorney General.

This is not the first occasion when such a complaint has been voiced forth in public nor is the Attorney General of India the only person who has given expression to such feelings. This observation of eminent citizens and responsible law officers of the Union of India coming in the wake of a resolution* passed at an Extraordinary General Body Meeting of the Madras Advocates' Association a few days earlier regarding the appointment of the Government Pleader by the Madras Government deserves very careful consideration by the powers that be. As we look at it, this issue is not one relating to any specific case of appointment but is one of principle. The immediate provocation for this resolution by the Madras Advocates' Association may be the recent appointments of the Government Pleader and the State Prosecutor from the Judiciary and Magistracy. Sri T. M. Krishnaswamy Iyer, President of the Madras Advocates' Association, made it clear at the meeting that no reflection was meant on the equipment or the qualifications of the individual appointees. We are only concerned with the principle of appointment and the long established convention that is now being departed from. We would like to fully endorse the objectives and ideals behind the resolution of the Advocates' Association.

*"This meeting of the Madras High Court Advocates' Association strongly protests against the appointments being made by the Government to posts of Law Officers of Government from among the members of the Judiciary, or such of them as may have resigned or retired with the appointment in view, thereby going against the long established convention that such appojntments are, to be made from amongst the practising members of the Bar of the Courts concerned. .. .. .." *(Resolution passed on 24th June 1960 at an Extraordinary General Body Meeting of the Advocates' Association Madras).*

NOTE :—*The following G.O. was issued by the Government on 29th June, 1960.*

"MADRAS STATE HIGHER JUDICIAL SERVICE.

The Madras Government have directed that where a member of the Madras State Higher Judicial Service is required to retire as a condition of his appointment to an office, which does not carry any benefits by way of pension or gratuity and to which the State Government consider, that it is in the public interest that he should be appointed, he shall be granted the retirement benefits to which he would have been entitled, if he had been invalided from the service.

In its application to the Madras State Higher Judicial Service, the Government further state Rule 5 (2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 will be superseded by the above order".

Another resolution was passed by the General Body of the Advocates' Association, Madras on 4th July, 1960.

"Resolved that the Madras High Court Advocates' Association records its emphatic disapproval and resentment against the implications contained in the Government Order superseding Rule 5 (2) of the All India Service (Death-cum-Retirement Benefits) Rules 1958, viz. (*a*) that it was passed for the benefit of single individual and not bona-fide for general future application, and (*b*) that the State Government considered that public interest, would best be served by totally ignoring the claims of the entire Bar in the State and appointing a member of the Madras State Higher Judicial Service to the post of Government Pleader, an action without any precedent or justification."

Acc. No. J 20328
Date........
P2326.

An independent Judiciary and a free and fearless Bar are the last hopes left in the country for the survival of democracy. Since the dawn of Independence responsible leaders and Ministers, both at the Centre and in the States, have made no secret of their dislike of the Judiciary and the Bar. The trend of legislation has also been in the direction of minimising the value of the Judiciary. Democracy, in its ideal concept, has lost much of its significance in the course of history and recent developments in many countries, in the East and in the West, are clear pointers of the intrusion of totalitarian ideas. As Sri Setalvad pointed out in his speech, India is one of the very few countries in the world today which is labouring hard to preserve democracy. It will indeed be a mockery of democracy if insidious intrusions are made on the independence of the Judiciary. The Attorney General quite appropriately called upon the members of the legal profession to cultivate public opinion and to preserve the democratic institutions. It is the duty of the lawyers to cultivate public opinion against all anti-democratic tendencies.

We would like to recall to the authorities that the the protest made by the Advocates' Association is not out of any personal considerations. The Madras Bar has always stood against such unconventional appointments. In 1943 when a District and Sessions Judge was appointed as an Advocate General of Sind the Bar raised its voice of protest and an eminent lawyer and statesman, the late Sri T. R. Venkatarama Sastri wrote under the title "An unconventional appointment"[1] as follows:

"The Office of Advocate General carries with it great prestige. He is the *de jure* leader of the Bar. He is the *ex-officio* President of the Bar Council in the Presidency-Towns and a member thereof elsewhere. He leads the Bar in the matter of etiquette and decorum. He has been the exponent and defender of the Bar's rights and privileges. His position is comparable to that of the Attorney General in England. Special powers are reposed in him under the Procedural Codes and the Letters Patent. The three Presidencies alone originally had each an Advocate General. The Joint Parliamentary Committee Report has stated that he should be a person of "*independence* and *standing* who would occupy substantially the same position as that of the Advocate General ....attached to the government of the three Presidencies." Active membership of the Bar with a strong forensic record seems alone to be indicated. The Advocate General should be a practising member of the Bar. To appoint a member of the permanent service to the office violates the spirit of the Government of India Act and the conventions attached to the Office."

These observations made about the office of the Advocate General may well apply with equal force to the appointment of Government Pleader. The post of Government Pleader requires an experienced lawyer of standing at the Bar and with adequate knowledge and practical experience of the ever-growing statutes and case-law in the field of substantive and procedural laws. The Government Pleader is not merely an Advocate arguing or defending a case for the government but he is their adviser. Members in the Judicial Service however eminent or capable they may be cannot be expected to have that comprehensive equipment and training which a practice at the Bar provides. We do not believe that the

1. (1943) 2 M.L.J. (*Journal*) page 45.

Madras Government feels that there are not enough qualified persons among the members of the Bar to occupy the post of the Government Pleader or State Prosecutor so as to compel them to choose the incumbents to these offices from the Judiciary and Magistracy. Such appointments have always been made from among the practising members of the Bar on all occasions in the past, and if government have any special reasons for departing from this well-established and well-meant convention they could have come forward with their reasons publicly. We trust the government will not ignore the claims of the Bar and remain deaf to the protests made by the legal profession. It does not need great imagination to realize that the independence of the judiciary will not be maintained if members in the service are led to think that by sailing with the wind they stand even a remote chance of reward of higher appointments.

To repeat the words of Chief Justice Hughes of the the Supreme Court of the United States "If democratic institutions are to survive it will not be simply by maintaining the majority rule and by swift adaptations to the needs of the moment, but by the dominance of a sense of justice which will not long survive if judicial processes do not conserve it". We are rudely reminded of these words by certain happenings in quick succession in recent times. Such happenings, not only in this State but in other States as well in the country, make us feel that there is a deliberate and calculated move on the part of government to belittle the importance of law and lawyers in society. It may be these events have happened in quick succession more by accident than by design but the cumulative effect of these makes it apparent that the government is indifferent to such happenings and is also putting its seal of approval by its silence. The Bar has always been vigilant and has lodged its protest against such happenings. But all the well meant protests of such august bodies have not been given due weight by the powers that be. The privileges of the Bar are not intended to glorify the profession or the personalities engaged in it. They are the background on which an independent Bar can ever serve the public purpose for which this institution has been founded, and encouraged in all civilized countries. We join in the protest against these recent trends and departures from established conventions and trust that the claims of the Bar will receive due and adequate consideration.

APPROACH TO PROBLEM OF LEGAL EDUCATION IN INDIA.

By

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A discussion on the subject of legal education will have inevitably to start with a clear vision of its objectives. In that the first question to consider is, what is it that legal education is trying, or what should it be trying, to ccomplish. This fundamental question should be answered before any attempt to assess the present system or any suggestion for the future reorientation of it may be made.

THE AIMS OF LEGAL EDUCATION.

Is the object of legal education to train individuals to be good lawyers? Though the main purpose of legal education may be to create good lawyers as medical education is to produce good doctors, legal education in a dynamic society has to serve a more comprehensive purpose than merely producing lawyers, as a school of technology produces technicians. An infant independent nation, where it has opted democracy as political set-up and preferred socialism as the social order, on the wake of its democratic experiment it has to reorganise all the principal agencies of social democracy in which the foremost one is education. In this legal studies are of no minor importance.

The three-man Committee which made a study of legal education in California in 1949, said, 'In the last analysis legal education has two related objectives—the training of lawyers and the improvement of the law'[1]. In India the latter purpose has been taken up by the Legislature and the Ministry of Law and as such falls outside the scope of discussion in this paper.

The next query is about the function of a University Law Faculty, and the purpose it has to serve. Is it simply to impart some elementary principles of the various branches of the existing system of laws of the country, and thus equip the students with a background knowledge, for the practice of law, or something more? For, to train men for the legal profession is a more arduous task than the one mentioned above. To answer this, it is worth considering the observations made by some of the Committees that studied the problems of legal education in the U.S.A. The Committee on Legal Education, of the Harvard Law School, stated: 'A University Law School has two purposes: (i) to train men for the legal profession; (ii) to provide a centre where scholars may contribute to an understanding of law and government and may participate creatively in their growth and improvement[2]'. Again Dean Cecil A. Wright, of the Toronto University suggested that 'the three big objectives of a University Law School should be : (i) education in the qualities that should be found in a legal practitioner; (ii) education that will train a man not merely in the work of solving problems of individual clients but the society in which he lives; and (iii) to act as a centre of research, criticism, and contribution to the better understanding of the laws by which societies are held together[3]'. Prof. W Berton Leach writing on the aims of legal education observed that 'The men whom we are now training must be prepared to perform two tasks during the productive years of their professional lives; (i) to assume direction of all phases of the areas of personal conflict inherent in a complex society and economy. They must be advisers, negotiators, advocates, judges, arbitrators, and frequently administrators and exe-

1. Legal Education and Admission to the Bar in California.
2. Preliminary statement of the Committee on Legal Education of the Harward Law School, 1947.
3. The University Law School ; 2 J.L.E. 1950 ; pages 409, 412.

cutives having a large amount of quasi-legislative power; (ii) to provide a very large proportion of national leadership to all level of authority'.[4]

The foregoing analysis reveals that the function of a law school is not merely to impart elementary knowledge of law, but to train men for every possible walk of life. Even if it is granted that the primary duty of a law school is to equip men for legal practice, one can dare say about the profession that no other profession or calling requires of its votaries so high a degree of versatality, insight and imagination as is demanded of the lawyers. To a lawyer, knowledge is a factor, legal knowledge must be his quest, and knowledge over a wide range of subjects, legal and non-legal, must be his hobby. In the legal profession both aptitude and skill is involved. The lawyer is a craftsman, and unless he becomes a pastmaster in his craft he cannot thrive in these days of keen competition and congestion in the field not to talk of success. Hence the purpose of legal education and the function of law schools must be to train the mind and to inculcate in the youth the skills of the craft. To become well versed in this craft the basic qualities required, are, fact consiciousness, a sense of relevance, precision and persuasiveness of speech, lingual perfection, and above all the capacity of self-discipline. The legal profession demands an attitude of mind—a mind that can think as problems arise for solution, untrammelled by preconceived notions. 'An outstanding quality of the successful lawyer is his capacity for adaptation to new tasks and his ability to educate himself to meet constantly changing demands.[5] To what extent and by what method this could be achieved in a law school is the problem which calls for solution.

In the formative period of its democracy and in the first flush of its independent spirit India has to overcome the tendency of a bureaucratic mind shirking to shed many a cherished tradition. In that the lawyer, if he is to meet the demands of a pluralistic society as ours, which is emerging from the meshes of feudal conceptions, where the nature and pattern of social development calls upon the lawyer to bridge the gaps in the process of dynamics and synthesis of society; he must have a deep sense of social responsibility and awareness of the social problems than any other vocation-seeker. For this, in him must vest a high degree of versatility, versatility in the sense, of having an attitude for newer tasks and a quality of adaptation. Hence legal education in India should aim at training, trimming and toning of prospective lawyers, to develop their abilities, aptitudes and qualities and to cultivate their faculties of thought and action so that they stand up to the needs of the time, meeting the challenges that are inherent in social dynamics.

Assessment of the Present System.

This leads us to an evaluation of the present system of legal education in India, in the context of the result it produces. The present-day legal education has had its roots in the History of British rule in India. A system of education introduced on the Indian soil more than a century and a half ago for the preservation and service of an Empire ; and, though history had its course all these long years, on the surface and structure of society, landscaped by vital changes both in its psychic and philosophic aspects ; the sphere of education remained in the same original form ; and the most needed change in that field that ought to have taken place has not taken place to cope with the changed pattern of life and relations in society. The mode of administration of educational institutions, the curriculum that was enunciated and the method of instruction that was devised a hundred years back, for an entirely different purpose continued almost unaltered and prevails even today. Althrough, except some minor and superficial changes or some additions and substitutions in the papers included in the curriculum, the old as it was, was followed up till this day without any appreciable change in the manner of teaching, even though education today is to serve quite a different purpose. This accounts for

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4. Journal on Legal Education, Vol. 1 ; pages 23, 29.
5. Statement of the Committee on Legal Education of the Harward Law School, 1947; page 6.

the inadequacy. Thus the present system rendered a very wide gap between the products that are required for the present set-up and the products that have been produced today. For, an institution which have not changed itself with the changed conditions of society cannot produce the right type necessary for that society.

In England preparation for the practice of law had been, in the main, through apprenticeship training and through the Inns of Court. The education given in the Inns was primarily of a practical kind though theory was not entirely neglected. It was an education which trained students for their work at the Bar and on the Bench. The academic and practical training under the English system are strictly separated; the Universities impart the academic training while the Inns of Court and the Council of Legal Education and the Law Society deal with the training of professional lawyers[6]. In the continental countries law was taught only in the Universities; but was taught as a science and in the setting of its inter-relations with the humanities and the social sciences.[7] In the Continent too, legal profession does involve practical training. Extended apprenticeship are required after the students have finished their legal studies in the Universities. What is important to note is that the curriculum and the mode of instruction are so often revised to keep pace with the social and political changes in the national type. On the American scene legal education in its formative era had its traits of English heritage and the corresponding English institutions. But as it evolved legal education gravitated more to the Universities which factor tended materially to differentiate the system with that of England and align the American programme with that of the Continent[8]. The structure of American law is erected, true, on the foundation of the English Common Law. Yet, in America they revolutionised the legal system and law teaching in such a way to serve the best interests of the American nation. In the system of legal education which prevails in the American Law Schools, attempts have been made broadly to combine the theoretical and practical training by experimenting what is called 'the performance courses'. In the present day the American system stands far advanced contributing very much by their new scientific approach to the problem of law teaching all over the world. The case-law method itself is an innovation and contribution of American legal research.

In India what is found wanting is this lack of innovation and revolution in the technique of teaching and study. In our country the curriculum and mode of teaching remained practically unaltered for over a century and a half, that one is constrained to say that the method and subjects of teaching in the faculties are outmoded and unsuited for a society which had marched a hundred years ahead towards industrialization. Another drawback now apparent is a lack of co-ordination and co-operation between law teaching in the Universities and the legal profession in the country that the law graduates after enrolment remain idle and unattended for a long period at the Bar, unless they are enthusiastically backed by the doyens of the profession. The causes that led to this decline and downfall of prospective lawyers may be many. It can be attributed to the lowering of standards of instruction which is a necessary corollary of all round lowering of the standards of education; a shortsighted policy of neglecting English language at a transitional stage without properly developing the national language; overcrowding in the academic institutions and above all a lack of proper initiative and interest on the part of the students and teachers in general. Though varied are the reasons, the cumulative effect is that the products of these institutions of law teaching prove themselves a failure in the profession, and ultimately they have recourse to other avocations after an attempt and waste of time. To sum up the position in India today, one finds quite a vast number of law graduates in the lurch, incompetent for the profession, ill-equipped for any career, unprepared for any avocation, misfit in the social sur-

6. Law Commission Report (1959), Vol. 1; page 525.
7. Hazeltine, Legal profession and legal education, Ancient and medieval, 9 Encyl. of Soc. Sci.; page 324.
8. Legal Education in the U.S by Albert Harno; page 4.

roundings, indisciplined youths with a rebellious spirit craving for proper accommodation in the society in which they live or with a deep sense of frustration willing to turn out to be miscreants as soon as they are out of the portals of the University.

LEGAL QUALIFICATION TO THE BAR IN INDIA.

In the legal profession there are three categories of practitioners in India, the Mukthar, the Pleader, and the Advocate. The former is a fast dying species while the latter is steadily multiplying. The Pleaders, if they are graduates in law could get their certificate of practice after obtaining training for a period of six months under an Advocate of six years' standing. A Pleader can appear only in the district and subordinate Courts while an Advocate can appear in the High Courts, and any of the subordinate Courts within the territorial jurisdiction of the High Court. As Advocate a graduate in law can get himself enrolled after one year's training under a senior lawyer. There is substantial difference in the fee charged from both the categories, which in fact is the factor which perpetuates the two classes of legal practitioners. In some of the States they have a Bar Council examination which the prospective Advocate is required to pass before his enrolment and after an year's apprenticeship practice. Thus there is still certain want of uniformity in the method of enrolment of legal practitioners in the various States in India. As it prevails, while professional training is left to the Bar Councils or senior lawyers ; the task of academic legal education is left to the Law Colleges affiliated to the Universities. And in law teaching also one can notice a lack of uniformity.

Law teaching in the country is generally centralized in one department or faculty as is found in the residential universities of Aligarh, Lucknow, Allahabad and Delhi, or as in the Law College under the Universities of Madras, Kerala, Punjab, Calcutta and Bombay. It is found decentralized in the case of Agra University where a department of law is organised in the various private constitutent affiliated colleges, where teaching is mostly done by part-timers from the profession. Regarding the subjects that are taught, in some of the Law Colleges Roman Law is found being taught as vigorously as was the case in the late nineteenth century while International, Law, Labour Laws, Administrative Law and such other newly developed branches of law have not yet found their due place as subjects of importance. This sort of disparity in the subjects taught and in the manner of imparting legal education and a lack of proper understanding of the needs of society which is to the catered by the law graduates coupled with a want of coordination of law teaching and legal profession and failure in the synthesis of academic approach with professional interest renders legal education in India a boon to youths of exceptional capacity and circumstance while a bane to the mediocre who comes out with a superficial and elementary knowledge of the system of the laws of the country without imbibing the spirit of the social values that are embodied in the system or knowing the significance of a system of legal education in the country.

THE PROBLEM.

The problem is, how should legal education be organised to serve the best ends of society. That is to say, what pattern of education in the field of law will meet the social needs. This raised questions regarding methods of instruction and the subjects to be taught. Another allied problem is, should law teaching be a sort of special study with less number of students as is found in totalitarian countries and western democracies, or should it be devised as a large scale liberal education. In the former case the problem is how to regulate the present day overcrowding of the classes ; and in the latter case, the problem is how to standardize the legal education to improve the quality. An answer tot his problem raises many a theoretical question. Both quality and quantity are required for a developing society, particularly when the idea of a welfare State envelopes the germinating democracy.

POSSIBLE SOLUTION.

The social structure of Indian society is fast evolving, from a plural, feudalistic and backward to an industrial *cum* agricultural one. To such a society the right type

of education is that which tends to promote the cohesion and that which rehabilitates the spirited youth in transformation. In other words if the education imparted enables him to find his place in society and helps him to earn a tolerably decent living that would be the best purpose that education could possibly serve in any country at any time. A rehabilitated youth in the changed conditions of society, having a decent income to live on can never possibly turn to be a miscreant and can only be thought of as discharging the duties of a responsible citizen. Towards this end legal education must be reconstructed. In short, the purpose of legal education must be to make the educated youth a good responsible citizen best fitted to the society in which he is and to make him earn a decent living by a profession which he has opted or to which he is co-opted or to which he is inclined by the academic qualifications he has gained from the University. If this be taken as the primary aim of legal education a solution to the present day problem depends upon the reorientation of the legal studies in India. A reconstruction of the system of legal education in India naturally involves the problems of selection and admission of students to a graduate course with a view to improve quality and regulate quantity a revision of the curriculum determining the contents of the programme of studies leading to a graduate degree in law, a reconsideration of the methods of instruction and a reorganisation of the administration of law departments.

Legal education must be conceived both as a social disciplining and as a technical qualification for an avocation of a specilized type, the study of which enables one to the solution of the conflicting complexities involved in human and social problems. Law and legal problems are very much social problems and as such law as a subject of study in the University must be studied in the perspective of its inter-relations with other humanities. Further the study of the subject must emphasise the impact and importance of substantive and procedural laws and the administration of justice upon the individual and society at large.

Coming to some of the specific problems, the first question is that of admission to law courses. The study of law must be reckoned as a post-graduate course though it is graduate degree of law that is awarded. Graduation in Arts, Science or Commerce must be made the basic requirement for entrance to the law courses.[9] It must be organised as a three year course of intensive and extensive study and training. Though the views of the Chagla Commission[10] were expressed in favour of retaining Intermediate examination as the minimum standard required for embarking on legal education, which they supported on the basis of English and Canadian practice, it is open to doubt whether an Indian student brought up under Indian conditions could acquire that much of general knowledge and maturity of thought and develope that much of acquisitiveness to enable him to grasp the subject of law just at the stage when he passes his Intermediate examination. Legal studies in India must be organized for Indian conditions and for Indian students, who as a matter of fact have been very poorly fed in the necessary literature and knowledge due to the conditions of poverty that encircle the average middle class family of India. The dissenting minutes of the reports[11] advocate the case for graduation as the minimum standard and state that the 'half baked and ill equipped lawyers would have never come into existence', if graduation had been made the stage of admission.[12]

The Rajasthan Legal Education Committee is of the view that graduation must be the minimum qualification for admission to legal studies and legal education must be a three-year course.[13] This view has been supported by the Deans of the two

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9. In Bombay for the three-year course in Law, Intermediate is the minimum qualification and not graduation.
10. Report of the Bombay Legal Education Committee (1949).
11. Law Commission Report, Vol. 1; page 527.
12. *Ibid*, page 94.
13. Report of Rajasthan Legal Education Committee, 1955; pages 39 and 42.

most developed Law Faculties of two outstanding Universities of India[14], and by Mr. Justice Bhagvati. The Andhra practice also goes in favour of this view as they have made graduation as the minimum qualification for admission in spite of the report of the University Commission recommending for the retention of intermediate examination as the basic requirement.[15]

To support the proposition of a three-year course the views of eminent men like Tej Bahadur Sapru, Dr. R. U. Singh and Prof. L. R. Sivasubramonium are testimonials enough[16]. Entrance to a law course must be made on the basis of an interview by an admission committee, and only students of certain matured age groups; say those who have completed seventeen years of age and below twenty five, so that their maturity of mind and outlook will render it easy for them to grasp the subject. The interview must be to judge the aptitude of the boy, his acquisitiveness and understanding capacities, his antecedents and his parental position with relation to the career he is opting. By an objective evaluation of the boy's potentialities if the interviewing Committee recommends him for admission, he must be allowed to take up his legal studies and be enrolled as a law student.

Once he is admitted to the law courses, he must be given an intensive instruction both in the theory and development of substantive and procedural laws and in the practical side of legal profession. For this, a revision of the curriculm is inevitable and the mode of instruction must also be changed. Further, to combine the professional and academic side of law a method should also be evolved.

The first year of the study may be considered a preparatory class wherein the students may gain the necessary background and the fundamental notions regarding the social aspects of the concepts of substantive law. The second and the third year must be so arranged that they receive academic instructions for about four hours in the University classes while simultaneously they get practical training in the law Courts as well as in the lawyers' chamber. To this effect every University must see that they enlist at least three or four scores of experienced legal practitioners of standing and repute from the local Bar to whom the law schools may send groups of students for practical training. In the 2nd and 3rd year of their study it must be made compulsory that the students work with their respective lawyers in their chamber and in the law Courts at least 3 to 4 hours. The students must be made to maintain a diary of their own showing the cases in which they work with their lawyers and attended the Courts. The timings should be schemed to enable them easily to execute both the academic and practical side of legal profession. For example, a system of shift may be devised so that the boy attends the lawyers' chamber from 7 A.M. to 10 A.M.; then the Court from 11 A.M. to 2 P.M. and in the evening he may attend the University classes from 4 P.M. to 7 P.M. Three hours at the lawyers' chamber, three hours at the law Courts and three hours at law school will be time well spent. It should be emphasised that unless the boy concerned makes himself eligible by production of a certificate of prompt attendance and diligent work from his respective lawyer to whom he is attached and from the Judges of the High Courts wherein he attended the proceedings, it would be deemed that he has not completed the qualifications required for graduation in law. It may be added that the scheme envisages an intensive training in the field of legal profession and legal knowledge. If such a scheme, where practical experience in the professional field goes side by side with the academic instructions, a lot of waste of time, energy and money that is involved now could be eliminated. And the one year which is increased in the extension of the law courses could be saved by such a co-ordination.

The students must be required to utilize their spare time and non-working days for library work.

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14. The views of Late Dr. R. U. Singh, Dean, Faculty of Law, Lucknow University and Prof. L. R. Sivasubramonium, Dean, Faculty of Law, Delhi University, quoted in Law Commission Report, Vol. I, page 528

15. *Ibid.*, page 528.

16. *Ibid.*, page 530.

CURRICULUM.

The first year being a preparatory year, it would be better to limit the number of papers and give intensive instructions on those subjects which will give a grounding knowledge of law and legal system. What is required is to create a habit of perseverence and inculcate an aptitude and interest for legal studies in them. Thus in the first year the following subjects may be taught :—

Paper I.—Legal History—history of the development of law and legal institutions in India and England.

Paper II.—Fundamentals of Constitutional Law with special reference to Indian Constitutional Law.

Paper III.—Modern political constitutions—a comparative study of written federal constitutions.

Paper IV.—Law and Humanities—Law in relation to other social sciences—particularly Sociology, Social Philosophy, Ethics, Economics, Commerce and Politics.

Paper V.—Jurisprudence.

In the second year the necessity of acquiring practical experience at the chamber and at the Bar has already been stated above. Thus emphasis must be laid more on the procedural laws, which today is a neglected area of the curriculum, though is the most important part of the legal profession. Hence the following subjects may consist of the second year course :—

Paper number 1.—The Law of Evidence.

Paper number 2.—Criminal Procedure, Civil Procedure.

Paper number 3.—Indian Penal Code.

Paper number 4.—Legal Remedies.

Paper number 5.—Legislative principles, methods and interpretation.

Paper number 6.—Legal Drafting, Pleadings and Limitations.

Paper number 7.—Miscellaneous Acts, such as Court-fees Act, Stamp Act, Registration Act, etc.

Familiarity with these papers in the second year will equip the students to understand the proceedings of the Courts better and, ensure them with a confidence to handle cases at the very start, without much dependence on their senior Advocates. The view of the Law Commission as expressed in its report on Legal Education, that the teaching at the Universities should not include procedural, taxation and local laws and other cognate subjects which may with advantage be left to be taught later to those who intend to take a professional career in a course where teaching will be imparted by professional men[17], does imply that the procedural laws are relevant only to men of legal profession. To this it can be stated that the very concept of a Democratic social order and the basic assumption underlying a constitutional democracy, is that the society is governed by laws and not by men. As such the foundation of society rests upon the main concepts of Rule of Law, which in its turn presumes, that every citizen, literate or illiterate is presumed to be in the know of the laws. The legal fiction that every man knows the laws by which he is governed and that ignorance of law is no excuse, however ignorant and innocent the man be, is the ruling and guiding principle of Rule of Law, which pervades a constitutional democracy. When this is the underlying presumption of the governing principles of our society, the knowledge of the procedural laws is a great asset to the individual, whatever be his occupation or profession. That only professionals who take to legal profession as career must acquaint themselves with the proceedural laws is to project an obliterated view, by which the whole idea of the

17. Law Commissions Report, Vol. I, page 531.

aims of legal education seemingly stand blurred. The one fundamental idea with which legal education in India is to be reorganised is to serve the ends of a political representative democracy. To suggest, that when the fundamental principles of substantive law have been fully grasped, the student will more easily appreciate the procedural and practical aspects which are but the application of the general and fundamental principles,[18] is nothing but a presumption which has to be verified in the light of experience.

Any practical approach to the problem of legal education must endeavour to achieve the best and for that an imaginative approach on the lines in which the Harward Law School started its orientation by the introduction of new subjects and method of instruction after the thirties of this century, is a pointer and may well be a guide.

The revised curriculum of the Harward Law School attempted to harmonise three different principles. These are : (1) 'That every one on the Faculty should be helped and encouraged to develop the best thought that is in him and put it at the disposal of the student to the fullest possible extent. (2) That every student should receive a solid foundation of conception and method in each of the great basic legal subjects such as litigation, crime and tort, property, contract, association and Government—with opportunity as he progresses to pursue the field of his special interest in greater detail. (3) That the courses and their contents should be arranged so far as practicable, so that the student will proceed to the complex from the single and each will throw the greatest possible light upon the rest.[19]

If this be taken as guide, the third year course must be deemed a sort of specialization in which the students are prepared for the field in which they are to set in. The students who successfully get through the second year must be allowed to have their own choice of papers. A variety of groups should be offered to them. Those who have developed an interest should be permitted to make their option to the best of their inclination, which to them they feel is most profitable to make. The papers should be so grouped that any student should be able to choose allied subjects by selecting two groups, so that they would have to sit for an examination of eight papers in all. It is not necessary to give the students an overcrowded syllabus covering all the branches of substantive laws. The reason is, it is seldom found that a lawyer who takes to the practice of constitutional or taxation cases deals in other cases where he feels not very sure. Nor is it to be seen that a practitioner in the Civil Courts taking to the Criminal side, except as an exception. Though it may be admitted that to keep a clear separation of the subjects and to envisage an exclusiveness is to fumble to fallacy, yet it could be feasibly and scientifically categorised to practical advantage. Since the aim of legal education in a University is to develop and to cultivate the faculties of individual capacities to study, understand and interpret in the social context the contents of law and to train them to seek and to find wherein is the law and its principles; to offer a sort of specialisation in the third year will be more useful than to shroud the students' mind with all and sundry. And if legal education in the University has served the purpose of developing the students innate faculties, then he who has acquired the habit of learning and acquisitiveness can easily find the way in any other branch of the field of law too, though he might not have studied those subjects while he was in the Law School. Thus it will not be difficult for those who had studied only property laws when they were students, to take to the field of criminal law or constitutional law when they are in the profession, as they had already become well versed in the art of searching, understanding and interpreting the law.

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18. Report of the Law Commission, Vol. I, page 532.
19. Report of the Committee on Curriculam of the Harward Law School, 1936, page 11 and 51 ; H.L.R., page 973.

To set as example, the following groupings could be adopted as the subjects of choice for the third year :—

Group I	..		.. *Personal Laws.*
		Paper 1	.. Hindu Law
		Paper 2	.. Mohammadan Law
		Paper 3	.. Matrimonial Laws
		Paper 4	.. Conflict of Laws
Group II	..		.. *Property Laws.*
		Paper 1	.. Law of Transfer of Property
		Paper 2	.. Equity and Trusts
		Paper 3	.. Easements, Specific Relief Act
		Paper 4	.. Land Tenures (of the State concerned)
Group III	..		.. *Constitutional Law Group.*
		Paper 1	.. Indian Constitutional Law
		Paper 2	.. American Constitutional Law
		Paper 3	.. British Constitutional Law
		Paper 4	.. General Principles (of Federal Constitutional Law.
Group IV			*Administrative Law Group*
		Paper 1	.. Administrative Law in U.S.A. and U.K.
		Paper 2	.. French and Continental Administrative Law
		Paper 3	.. Indian Administrative Law and Adjudicatory Tribunals
		Paper 4	.. Local Government and Municipal Laws
Group V			*International Law Group*
		Paper 1	.. Public International Law
		Paper 2	.. International Relations
		Paper 3	.. International Organization
		Paper 4.	Law of citizenship and nationality or private International Law
Group VI	..		*Crimes and Torts*
		Paper 1.	General Principles of Crimes and Torts
		Paper 2.	.. Specific Crimes and Specific Torts
		Paper 3.	.. Penology and Punishment
		Paper 4.	.. Law of Contempt of Court
		Paper 5.	.. Criminology and Indian Penal Code
		Paper 6.	.. Law of damages
Group VII	..		*Commercial Laws*
		Paper 1.	.. General Principles of Company Law and Indian Companies Act
		Paper 2.	.. Private Corporations, Partnership and Agency
		Paper 3.	.. Law of Contracts and Sale of goods.
		Paper 4	.. Law of Negotiable instruments, Insurance, Copyrights and Trade Marks
		Paper 5	.. Law relating to Public Enterprises (including those of the respective State)
		Paper 6	.. Law of Damages

Group VIII			*Labour Laws and Administration*
	Paper 1	..	Factory legislation (Factory Act)
	Paper 2	..	Law relating to Wages (Minimum Wages Act and Payment of Wages Act).
	Paper 3	..	Law relating to Industrial relations (Industrial Disputes Act, etc.)
	Paper 4	..	Law relating to compensation and damages under the labour legislation (Workmen's Compensation Act, etc.)
	Paper 5	..	Law relating to special Tribunals and Arbitration proceedings (Indian Arbitration Act)
	Paper 6	..	Trade Unionism and Trade Union Laws. (Indian Trade Union Act, etc.)
Group IX ..			*Taxation*
	Paper 1	..	Distribution of Taxating Power of the Union and the State under the Constitution
	Paper 2	..	Income-tax and Estate Duty, Customs and Excise regulation, etc. (import and export)
	Paper 3	..	Sales-tax and other commercial taxes
	Paper 4	..	Rent Control and Eviction Act
	Paper 5	..	Local Government and Municipal taxes
	Paper 6	..	Miscellaneous Acts (Shopkeepers' Act).

Constant addition to these subjects necessitated by fresh legislation and revision of the syllabus at least once in five years, to make it all-inclusive if not exhaustive, must be made.

Any convenient combination of the papers with additions or substitutions may be adopted to suit the legislation of the respective States keeping in view that every group contains at least 4 papers, in which the students are required to take up examination, so that no student will have to give more than eight or nine papers and not less than seven papers by opting two groups of his choice.

This in short could be the curriculum for a three years course of law graduation.

Such an arrangement of the curriculum will have a double advantage. A student of the third year will have a liking for the subject which he chooses for his specialisation due to reasons specific to himself; and secondly, he would be well informed on the subjects of his study on completion and be in a position to feel his way in the field of profession, as he is already aware and proficient in the branch of law which he has opted to practice.

The lectures should be so organised and the topics of respective teachers on their subjects must be in advance announced, so as to enable the students of other groups also to attend if they like to make up their deficiency in that particular topic. It could be arranged that the teacher of a particular subject be advised to address on special topics, in which they are more proficient, to students of a different set of subjects to make them able to realise the inter-relationship of the subjects to one another.

After graduation, bright students may be admitted to a post-graduate course leading to a Masters' Degree in Law, spread over a period of two years of intensive and extensive academic instruction and research on the branches of the subjects in which they have qualified, or any other allied subjects of their choice; admission to the post-graduate course depending purely upon academic merit and aptitude, decided on the recommendation of their respective tutorial teachers and the admission committee.

By adopting such a scheme within a period of three years a student gains the necessary working knowledge of the practical side of legal profession through experience with the senior lawyer and the Courts and a fair knowledge of the substantive laws too, to enable him to thrive in the profession from the very start. Again, as the student is already for two years in the practical field where he has acquainted himself with a few litigants, he will be in a position to pick up his clientele with his own effort. If he cares to be diligent and honest, he will be just on his way from the beginning settled in life with an honourable earning to live with from the very out-set of his career in the legal profession.

METHOD OF INSTRUCTION.

To deal with the method of instruction at the graduate level, emphasis must be made on a harmonious blending of general lectures and tutorial instructions. The general lectures must deal with the main topics on every subject, while in the tutorial classes discussion may be upon more intricate details and complicated issues relating to the different topics of each paper. Tutorial groups must not be of more than eight boys in a batch drawing the attention of a particular teacher so that they are able to have more intimate and personal knowledge and appreciation of each other which is highly desirable and essential for a healthy academic atmosphere.

OVERCROWDING OF THE LAW CLASSES.

The next problem to be considered is the problem of overcrowding in the University law classes. To that the suggestion is regulation of admission as one of the ways. By prescribing age limit, necessary academic qualifications and interview into the candidate's antecedents and circumstances, which has been already mentioned in connection with the problem of admission to the law classes, a good number of those non-deserving and non-serious types, which are today found to be undesirable elements in the academic atmosphere of a University, could possibly be eliminated. Added to that admission to the LL.B. first year must be strictly restricted to such a number only, to make the number present and attending in each section to comprise a maximum 75 and minimum 50. Deducting a certain percentage of failures in the first year, the second year will comprise of still lesser number of students in each section. And in the Final year, the choice in the course of study offered are so varied that the students in their usual course get scattered into the various groups of their interest or inclination by which the number in each class remains steadily regulated and limited. It might be posssible that some of the most lucrative branches of law in the Final year may attract more students. But they will remain interested and serious students of the subject. Moreover, the Final year boys will be earnest due to various factors such as their practical training in the field of law during their second and third years, interest in their own subjects of choice, their consciousness that they are preparing for a career which is to start immediately, and that they are on the verge of completion of their academic life.

An added advantage to be noticed in this scheme of academic instruction-*cum*-practical training is, that the students remain engaged, systematically from morning to evening which helps them to be disciplined and trained for hard regulated intellectual labour. The whole scheme, of course, envisages initiative and active co-operation of the three estates of public life of nation, *viz.*, the Government, the Bench and the Bar and the University, for a successful implementation of it.

PROPOSALS.

The whole question of reorganisation of legal education in India must be viewed from the point of view of:

(*a*) Closer co-ordination of work done by the Universities with that of legal profession.

(*b*) Furthering advanced research in Legal studies.

(*c*) Standardizing the subjects and methods of teaching in the University law classes all over the country.

To achieve this the following proposals may be considered by those who are in charge of the affairs.

(i) An all-India permanent Advisory Committee on Legal Education consisting of 11 members may be constituted under statutory authority. The personnel of it must represent the academic side, the professional side and the Government. Hence two members may be appointed by the Universities to this body representing the most developed law schools in the country. Three members may be nominated to it by the Leading Bars including Supreme Court Bar. Two members may be nominated by the Chief Justice from amongst the judges of the Spreme Court and the High Courts. One member may be appointed by the Government as a Government nominee while one member may be appointed by the University Grants Commission. Two members must be nominated by the Law Teachers Association representing the law teachers of the country. No such member is to represent more than that body which nominates him.

The functions of the Committee should include :—

(1) Advice on broad principles of policy to be adopted in the teaching of law in the various law schools ;

(2) Co-ordination of teaching particular subjects in different schools ;

(3) The general scope of teaching and examining by the different law schools;

(4) The specification of standard of general education desirable for candidates for entrance to both branches of legal profession ;

(5) Consultation with any university, Government department or official committee, regarding matters of interest pertaining to Legal Education ;

It will be the duty of this Committee to assess and evaluate the progress and merits of the sytem of legal education in the country every five years and suggest suitable modifications in the subjects and methods of instructions and to evolve new patterns of study and research in the legal field, so that legal education of the country will serve the best desired ends in the scoial context of a dynamic society.

(ii) A Committee of advanced research on legal subjects is to be set up consisting of professors and lecturers in the most developed law departments of the various Universities, to which specific subject of current importance and development is to be referred by the Government for research and study, for which special financial grants ought to be made to the respective Law School.

(iii) Establishment of Law Libraries in all the Law Schools with liberal grants to expand and make available legal materials to conduct research must also be expedited[20].

In the words of J. Cordozo "the function of a Law School is to look at law imaginatively and discern behind the sordid quarrels of one litigant and another, a something that transcends the selfish rivalries of the hour, behind the petty and the ephemeral and the ignoble, the workings of an eternal process of which these are but the shadows."

If this is the function of a law school, a scheme of the sort as detailed above, must be planned for reorientation of law teaching, combining the apects of diffusion and acquisition of knowledge with that of experience both practical and research.

Legal education must be a national effort and not merely the task of the Universities alone. Unless national consciousness tackles it as a national problem, wherein the interest and energies of the Government, the Universities and the professionals play to solve it, on a national scale, no satisfactory solution satisfying the needs of a progressive society could ever be achieved.

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20. These proposals are adopted from the Report of Lord Atkins Committee appointed by Lord Sankey in 1932 to consider the question of reorganisation of English Education ; 51 L.Q.R. page 173 and 50 L.Q.R. page 472.

Sankarlal *v.* Collector of Central Excise and another,

(1960) 1 M.L.J. 367 : (1960) M.L.J. (Crl.) 290.

A NOTE

By

P. NAGARAJA RAO, B.SC., B.L., *Advocate, Nandyal.*

The Collector of Central Excise, Madras, recovered from the petitioner 500 packets of 7 O' Clock blades each packet containing 100 blades, having had reason to believe that the petitioner had evaded payment of customs duty. He was charged with the violation of section 19 of the Sea Customs Act read with section 3, sub-section (2) of the Imports and Exports Control Act, 1947. Thereupon, the Collector of Customs issued summonses to the petitioner calling upon him to appear before him and produce all the documentary evidence for the receipt of goods, *viz.*, the 500 packets of 7O' Clock blades.

Petitioner filed a writ petition in the High Court challenging the direction issued by the Collector and praying to quash the proceedings before him contending that the summonses issued to him by the Customs Collector requiring him to produce all the documentary evidence amounted to testimonial compulsion, which was violative of Article 20 (3) of the Constitution of India.

It was contended *inter alia* by the petitioner that officers of the Customs Department have been specifically empowered by the Sea Customs Act to impose various penalties including fines and confiscation of goods and that the acts or omissions in respect of which they have been so empowered to impose penalties or fines, constituted 'offences' within the meaning of Article 20 (3) of the Constitution. The Customs Collector, hence, is not entitled in law to call upon the petitioner to provide evidence before the prosecuting authority, which might tend to incriminate the petitioner.

On the other hand, the Government argued that the word 'offence' and the word 'accused' occurring in Article 20 (3) of the Constitution are employed only in relation to proceedings instituted before a Criminal Court, that the proceedings before the Customs Collector are not criminal proceedings though they are empowered to confiscate goods and hence there was no infraction of the petitioner's fundamental right of privilege against self-incrimination. The Customs Collector was therefore fully empowered to direct the petitioner to produce the necessary documentary evidence.

The High Court held, after considering all the authorities on the point that when proceedings are instituted by the Customs authorities, which may terminate in the confiscation of goods or the imposition of penalties without reference to any Criminal Court, the Customs authorities are not acting as Courts of law and the proceedings before them are not judicial proceedings. If the petitioner was asked questions which might tend to incriminate him, it would be open to him to claim preotction provided by Article 20 (3) of the Constitution. If the claim was over-ruled, and he was compelled to answer questions, then the answers given by the petitioner would not be admissible in evidence, should the Customs authorities propose to prosecute the petitioner in a Criminal Court at a later stage. The High Court also suggested the desirability of the Customs Department letting it known at the earliest stage to the delinquent who stands charged before them, whether the proceedings before them would terminate there itself or whether they would continue even in a Criminal Court. The findings of the High Court were, (1) that the protection afforded by Article 20 (3) of the Constitution, *viz.*, the privilege against self-incrimination is available only in so far as proceedings before a Criminal Court are

concerned and (2) that any departmental authority who is empowered by virtue of any provision of law to impose penalties is not a judicial Tribunal. The whole argument before the High Court centered round the question whether the protection guaranteed in Article 20 (3) of the Constitution was restrictive in its operation only so far as proceedings before a Criminal Court are concerned or whether it also extended to any other case of prosecution before any authority, who by virtue of any provision of law is authorised to impose penalties or sentence to imprisonment. Mr. Justice Balakrishna Iyer, who delivered the judgment of the High Court was inclined to accept the argument of the State that the protection against self-incrimination embodied in Article 20 (3) of the Constitution extended only to cases before the Criminal Courts. Even though his Lordship was inclined to accept the argument of the petitioner to a considerable extent, *viz.*, that the petitioner's fundamental right of protection against self-incrimination was violated when he was called upon to produce documentary evidence by the Customs Collector, still his Lordship qualified the privilege claimed by the petitioner by observing that the protection guaranteed by the Constitution would really come into operation only at a later stage when the Customs Authorities proposed to prosecute the petitioner in a Criminal Court.

Article 20 (3) of the Constitution provides, " No person accused of any offence, shall be compelled to be a witness against himself."

It is respectfully submitted that there is nothing in Article 20 (3) of the Constitution which warrants such a narrow interpretation as was pressed by the learned Advocate-General during the course of arguments that the protection extended only to cases before Criminal Courts.

" Offence " is defined in Criminal Procedure Code as any act or omission made punishable by any law for the time being in force. Article 20 (3) provides the guarantee against testimonial compulsion. This protection is indeed founded upon the fundamental principle of Criminal Jurisprudence that the person who is charged with the violation of any law or rule, which is made punishable, is presumed to be innocent until his guilt is established beyond reasonable doubt and it is for the prosecution to establish the case against the alleged offender and not for the latter to prove his innocence. The purport of Article 20 (3) understood in its true spirit is merely the reiteration of the fundamental rule of Criminal Jurisprudence referred to above, which has been invested with the sanctity of a Constitutional guarantee. The article employs the expression "accused of any offence". Does it mean and imply that he is only a person who is faced with a charge in a Criminal Court? With respect, it is submitted, that it is not. Indeed, as the learned Judge observed, the word 'accused' has not been defined in the Constitution. But this difficulty need not detain us long, since the expression used is 'accused of any offence'. It seems to me a careful examination of this expression leads to the inference that the guarantee provided by this Article is not restricted only to a person who has to stand in a dock in a Criminal Court, but is a general protection for all the people who stand charged before any authority for violation of any provision of law or rule. The Chambers Twentieth Century Dictionary defines 'accuse' as bringing a charge against, and the 'accused' as a person or persons 'accused of.' The word 'of' is defined as 'from among' 'out from' 'belonging to', etc. It is therefore reasonable to presume that the expression 'accused of any offence' is used in the sense as any person against whom there is a charge concerning any offence or against whom there is a formal accusation. It cannot be understood in the limited sense, *viz.*, that he is one who is to figure as accused in a Criminal Court and not as any other person against whom there is a charge with regard to any offence before any other authority. The Constitution envisages him as the person who is called upon to answer a charge by any person who is authorised to hear the same and punish him and it has not limited its protection only to those who appear before a Magistrate in Criminal Courts.

It is well to remember that in the instant case, the Collector of Customs issued a warning to the petitioner that giving false evidence in proceedings before him would be an offence punishable under section 193, Indian Penal Code.

The Criminal Procedure Code defines a judicial proceeding thus—"Judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath." Now when the Customs Collector administered the warning to the petitioner against giving false evidence when he is authorized to take evidence on oath, can it be said that the proceedings before the Customs Collector are not judicial proceedings. Undoubtedly, they are judicial proceedings, by virtue of the definition in the Criminal Procedure Code notwithstanding the fact that he has not the trappings of a Magistrate. The Supreme Court of India has observed in *M. P. Sharma* v. *Satish Chandra*[1], that the phrase used in Article 20 is 'is to be a witness' and not to 'appear as a witness'. It follows that the protection afforded to an accused in so far as it related to the phrase 'to be a witness' is not merely in respect of the testimonial compulsion, but may well extend to compelled testimony previously obtained from him. It is available therefore to a person *against whom a formal accusation relating to the commission of an offence has been levelled* which in the normal course may result in prosecution.

It is therefore respectfully submitted that the High Court has erred in holding that the proceedings before the Customs Collector are not judicial proceedings. It is also submitted that the protection guaranteed by Article 20 (3) is available not merely to a person who is arraigned in a Criminal Court but to any other person against whom there is a formal accusation in respect of any offence before any other authority who is empowered to prosecute the person concerned. It is also submitted that the proceedings before the Customs authorities are certainly judicial proceedings and the protection against self-incrimination would also extend to cases before them.

REJECTION BY WORLD COURT OF PORTUGAL'S REQUEST—DADRA AND NAGAR HAVELI'S *DE FACTO* FREEDOM.

By

PROF. K. R. R. SASTRY.

Truth lags behind while lies get a march ahead. One is reminded of this adage when one reads misreadings of the judgment of the International Court of Justice *vis-a-vis* Portugal's request for access to *Dadra* and *Nagar Haveli*. It is time that the Government of India give due publicity to the unambiguous rejection of the Portuguese case by the World Court.

FACTS OF THE CASE.

Portugal received a *Jagir* or *Saranjam* of *Dadra* and *Nagar Haveli* from the Marathas under the treaty of 1779 and the *Sanads* of 1783 and 1785. The grant of a *Jagir* or *Saranjam* always pre-supposed the overlordship of the giver. It was thus always less than that of Sovereignty.

Later when the British arrived on the scene they found the Portuguese in *de facto* possession of *Dadra* and *Nagar Haveli*. As the World Court has put it "the villages......acquired the *character* of Portuguese enclaves within Indian territory".

On 21st and 22nd July, 1954, Portuguese authority in that enclave was overthrown by the people therein. As a result of tension in the surrounding Indian territory, all passage was suspended by India.

The population of the enclaves set up before December, 1954, for itself a "free Government in the territory of the enclaves."

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1. (1954) 1 M.L.J. 680 : (1954) S.C.J. 428 : (1954) S.C.R. 1077.

APPLICATION OF PORTUGAL.

In December, 1955, Portugal was admitted to membership of the United Nations and on 22nd December, 1955, Portugal's application was submitted to the Court of International Justice.

PORTUGAL'S CASE REJECTED.

India has won on the merits—The majority of the Court has rejected Portugal's request and held that

" Portugal did not have in 1954 a right of passage in respect of armed forces, armed police, and arms and ammunition."

Regarding her request under the second head the World Court has held that India has always acted within her rights and has not violated any of her obligations. Thus India was well within her rights as sovereign of the surrounding territory, when she denied passage to Portugal to the enclaves.

In re PRIVATE PERSONS AND CIVIL OFFICIALS.

The Court has held that " Portugal had in 1954 a right of passage....subject to the regulation and control of India in respect of private persons, Civil Officials and goods in general."

Under the third head Portugal prayed for an injunction that " India should put an immediate end to this *de facto* situation by allowing Portugal to exercise the .... right of passage" (page 4 of Judgment). The Court has not given any satisfaction to this claim.

As the Argentine Judge, Justice Armand Ugon has stated (*vide* page 83 of the Judgment)

" These new facts (changes of July, 1954) must lead to holding either that the right which has been recognized must be suspended or that it has become extinguished. In either case, it must be concluded that the passage claimed must be regarded as incapable of exercise (in) the present situation."

RESULTS IN SHORT.

Since Portugal's claim whether in respect of passage or of Sovereignty stands rejected, *Dadra* and *Nagar Haveli* are *de facto* freed of Portuguese Colonialism.

As ethnically and culturally these villages of *Dadra* and *Nagar Haveli* are attached to India, the judgment of the Court of International Justice has made the process of these villages joining the Indian Union *easy*, *natural* and *legal*.

MR. N. RAJAGOPALA AYYANGAR.

The appointment of Mr. N. Rajagopala Ayyangar, retired Judge of the Madras High Court, as a Judge of the Supreme Court of India will be welcomed by one and all. In fact, his elevation to the Bench of the Supreme Court was expected much earlier, even when he was presiding as a Judge of the Madras High Court or almost immediately before his retirement from the Bench towards the end of 1959.

Mr. Justice Rajagopala Ayyangar goes to the Supreme Court with a ripe experience and a great tradition. An eminent lawyer and jurist, he proved an able Judge as well, during his work as such, in the Madras High Court, for over six years. His training under the great lawyers and statesmen like the late Mr. T. R. Venkatarama Sastri and Sir Alladi Krishnaswami Iyer is an invaluable asset. His Commentaries on the Government of India Act, 1935, and his handling of many important cases in the High Court at Madras and before the former Federal Court and the Supreme Court of India have earned him a reputation as an expert constitutional lawyer. As a Judge of the Madras High Court, both on its Original and Appellate Sides, he has been dealing with company law, taxation statutes and the interpretation of the Constitution. His work in drafting a comprehensive Bill on the Patents Law received high praise. The Bench of the Supreme Court, in the past decade, has been adorned by several eminent Judges from the Madras High Court. Sharp, active and energetic as ever before, Mr. Justice Rajagopala Ayyangar belongs to that illustrious group and we are sure the Supreme Court of India will be richer by his appointment.

We offer our warm and sincere felicitations to his Lordship on his appointment and wish him good health and all success.

BOOK REVIEWS.

PARLIAMENTARY SUPERVISION OF DELEGATED LEGISLATION, by John E. Kersel, Assistant Professor of Politics, McMaster University, Hamilton, Canada, with a Foreword by Sir Cecil Carr, K.C.B., Q.C., LL.D. Published by Messrs. Stevens & Sons, London : India Agent : N. M. Tripathi (Private) Ltd., Bombay. Price Rs. 20.

Delegated legislation has come into vogue in an increasing measure in recent times as the functions of the Governments have become more complex and varied. Governments under modern Constitutions are not exercising mere police functions. They are doing the work of great social reformers and social service organisations. Such functions of the Government lead to a large volume of varied legislation the like of which might not have been even thought of a century ago. Most of these legislations are of a specialised type intended to achieve certain social objectives or technical perfection. They involve more of administrative technique rather than legal issues. It is not possible to provide in these statutes all the details of the machinery or the intricacies of its administration. The administrative and executive part of such legislations are always entrusted to rule-making authorities who are best suited to the work by virtue of their special qualifications and experience in handling the day-to-day affairs of the Government. It is one thing to enact a law laying down the principles. But its administration may involve different considerations. Parliament or Legislatures, mostly composed of laymen, are neither equipped to make detailed provisions as to these matters nor is it practicable in the short duration of their sessions. Hence it has become necessary to delegate the powers to the Executive branch for effective implementation of laws by means of Rules and Regulations which have the force of law and are familiarly known as subordinate legislations. By this delegation Legislatures are not supposed to abdicate their powers in favour of the Executive. The delegation itself is circumscribed by the statutes which authorise such delegation. Excessive delegation or unauthorised delegation has always been struck down by Courts. Hence the need for proper supervision over the need and extent of the delegation. The exercise of the delegated power is also to be watched with great care as there is always a possibility of errors or abuse of such powers. Parliament as the ultimate law-making body and protector of the citizens' rights has a duty to see that under the cloak of delegated powers the civil servants do not become despots. We are familiar with the idea of judicial scrutiny of administrative actions. This book deals with the other aspect *viz.*, Parliamentary supervision of delegated legislation.

The Author of the work deserves to be complimented on his excellent and timely monogram on this important and interesting subject. Students of law, constitutional lawyers, legislators and parliamentarians will find excellent reading material in this book. The subject is treated with special reference to United Kingdom, Australia, New Zealand and Canada. But the work could be read with profit in any other country whose pattern of Government is similar to those.

The printing and get-up of the book is excellent.

LATE SRI V. L. ETHIRAJ.

It is with deep regret we record the passing away of Sri V. L. Ethiraj, a prominent member of the Madras Bar, a former Public Prosecutor and a great philanthropist. He was seventy and passed away peacefully on the morning of 18th August, 1960, at his residence in Madras due to coronary thrombosis. His sudden end, coming as it did, within a week of his return from Britain after undergoing treatment, was quite unexpected and it took the citizens of Madras some time to realise the news of his death which spread throughout the city within a few hours.

Born in 1890 in a well-known and affluent family of Vellore, North Arcot, he graduated from the Presidency College, Madras. He was called to the Bar in 1913 from the Lincoln's Inn and was enrolled as an Advocate of the Madras High Court the same year.

It is indeed needless to chronicle the career of Sri Ethiraj at the Bar. During his early days he was working with Mr. Chamier and later with Mr. Osborne, who was a leading lawyer on the Criminal Side in those days and who later became the Public Prosecutor of Madras. He also worked in the Chambers of Dr. Swaminathan, another leader of the Bar in those days. Early in his career, Sri Ethiraj had chosen the Criminal Side as his venue of work and very soon he gained a high reputation and built up a lucrative practice. For several decades he was the unchallenged leader of the Bar on the Criminal Side and his success was phenomenal. His advocacy had its own inimitable distinctive style. Cheerful and persuasive, with a mastery of the facts and clever marshalling of the evidence, with a keen and watchful eye on the leanings of the Judge, Sri Ethiraj got winning verdicts before the Judge and the Jury. That he was original in his approach to cases is to say the least. The very originality of approach made him digest the features of a case so thoroughly that his arguments had a telling effect. He was equally at ease and successful both as a Prosecutor and as a Defense Counsel.

Sri Ethiraj was the Public Prosecutor of Madras from 1937 to 1950 and has conducted several sensational cases during his tenure of office. He has gained the great reputation of being one of the fairest of Public Prosecutors. Never anxious to get a conviction by methods, questionable even in the slightest degree, he played the intellectual battle in the best interests of the State and society and the high traditions of the profession. It is high compliment to his talents and professional ethics that quite a number of his juniors became Judges of the High Court in Madras and Andhra and the present Public Prosecutor, Sri P. S. Kailasam, was also his junior. The interest he took in the progress and success of his juniors was almost parental.

Looking back on the years it could be said without any hesitation that Sri Ethiraj had many friends and no enemies. Tall and graceful, with sharp features and a winning smile on his face, spotlessly clean and meticulous in his dress, a distinctive air of care-free life, everything about Sri Ethiraj had a style of its own which was admired by everybody. Age had not withered him and he was his masterly self,

till the end both in and outside the profession. A gentlemen from top to toe, he envied nobody and his pleasant manners were liked by everyone. A keen sportsman, a connoisseur in automobiles one could have seen his distinctive and easy style even in driving or parking a car. Sri Ethiraj was a keen horticulturist and his home garden has won several awards in the competitions held by the Madras Horticultural Society.

Sri Ethiraj has earned a high place among the philanthropists of the country and his name would be remembered by posterity for his princely donation to the Ethiraj College for Women in Madras. In recent years the profession of law and the progress of this institution were his all-absorbing interests.

In the first Court Hall, packed to its full by members of the Bar and Law Officers, before their Lordships, the Chief Justice, Sri Justice Somasundaram and Sri Justice Veeraswami, Sri P. S. Kailasam, Public Prosecutor and Acting Advocate-General of Madras, made a touching reference to the passing away of Sri V. L. Ethiraj and said that the profession has lost one of its giants and it will be difficult to replace him. The Chief Justice, Sri P. V. Rajamannar, associating himself and the Bench with the sentiments expressed by the Acting Advocate-General said that in the history of the Madras High Court, Sri Ethiraj would be remembered as the greatest Public Prosecutor that the Court has seen.

Reference to the death of Sri V. L. Ethiraj was also made before the Principal City Civil and Sessions Judge and before the Presidency Magistrates. The Bar Association and the Madras High Court Advocates' Association met and paid tributes to the eminent lawyer and citizen of Madras and passed resolutions condoling his death. The staff and the students of the Ethiraj College for Women met and passed a resolution expressing deep sorrow at the death of the founder-benefactor of the institution.

We offer our sincere condolences to the bereaved family and it may be a source of consolation to them that their loss is shared by many outside the family also.

May his soul rest in peace.

THE HON'BLE MR. JUSTICE P. V. BALAKRISHNA AYYAR, I.C.S.

There can be no greater compliment to the efficiency of disposal of a case and no greater tribute to the fair-mindedness of the Judge who disposed of the case than when the counsel who had lost his case comes out with the satisfaction of having lost it. Every coin has two sides and so has every case. It is with our judgments as it is with our watches, that none go alike, yet each swears by his own. In the ultimate analysis the effective administration of justice is not judged by the success of one side or the other to the cause but by the establishment of the rule of law on firm ground. Thanks to Providence we have still in our Judiciary eminent Judges who never swerve from this great task. Patient hearing, sympathetic understanding, tolerence of other view-points, freedom from bias or prejudice against personalities or the nature of the cause and an impartial judgment without a disposition to satire, these are the attributes of a great Judge. And it is on such great Judges depends the future of our democratic institutions. In the words of Lord Erskine, the famous English Advocate who later became Lord Chancellor of England, "whatever we have lost of our control in Parliament, we have yet a sheet-anchor remaining to hold the vessel of the State amidst contending storms—we have still, thank God, a sound administration of justice secured to us in the independence of enlightened Judges and the integrity of the Bar—ready at all times and upon every possible occasion, whatever may be the consequences to themselves, to stand forward in defence of the meanest man, when brought for judgment before the laws of the country."

The Hon'ble Mr. Justice P. V. Balakrishna Ayyar, I.C.S., who is demitting his office as a Judge of the Madras High Court towards the close of this month, on attaining sixty, is one of those great Judges who has infused in our minds the hope that everything is not yet lost. Mr. T. M. Krishnaswami Ayyar, doyen of the Madras Bar who has seen over fifty years of life at the Bar, echoed the feelings of the members of the Bar and the public when he said that Mr. Justice Balakrishna Ayyar was one of the greatest Judges that ever sat on the Bench of any High Court in any country. Some of the recent pronouncements of his Lordship in what are familiarly known as the 'Text-book case' and the 'Government Pleader's case' have evoked much interest that has enhanced the reputation of the Madras High Court.

Mr. Justice Balakrishna Ayyar belongs to the Indian Civil Service, reputed for its efficiency and fairness in administration. Born in 1900 in an aristocratic family of Malabar, he had a brilliant academic career, standing first in almost every examination. As a graduate of the St. Joseph's College, Tiruchirapalli, he won the Norton Prize and as first in the F.L. Examination he annexed the Moorhead Prize. He came out first in the competitive examination for the Indian Civil Service in 1923. Entering service in 1926 as Assistant Collector he was in the Revenue Department till 1933. After judicial training he was posted as District and Sessions Judge in 1936 in which capacity he served in several Districts of the then composite State of Madras till 1946. From 1947 to 1948 he was Additional Secretary and Secretary to the Government of Madras in the Legal Department, when he was appointed as Judge of the Madras High Court in January, 1949.

During his tenure of office as a Judge of the High Court for nearly eleven years his Lordship has presided over all the branches of work, on its Original Side, Criminal Sessions, Appellate Side, Civil and Criminal. A sincere and visible effort to grapple with the intricacies of a case, a transparent frankness in clearing his doubts, tremendous patience in listening to any amount of argument and painstaking analysis of facts, however complicated or wherever they lay to discover the truth, effective silencing of extreme arguments and a uniform policy of approaching every case from first principles, without any leanings on either side, these were the characteristics that marked his Lordship's method in disposing of cases before him. When we think of the learned Judge's work in the High Court we are reminded of the words of Justice Story in the famous Dartmouth College case, where he said "I have pondered over the case before us with anxious deliberation. I entertain great respect for the legislature whose Acts are in question. . . . . no less respect for the enlightened tribunal whose decision we are called upon to review. I have endeavoured to keep my steps *super antiquas vias* of the law, under guidance of authority and principle. It is not for Judges to listen to the voice of persuasive eloquence or popular appeal. We have nothing to do but to pronounce the law as we find it; and having done this, our justification must be left to the imperial judgment of our country." Mr. Justice Balakrishna Ayyar did this and more. He was a real corrective on the administration and his sense of fair-play, equity and ideal justice made him almost rebel against unfair ends or means. He insisted on getting the facts clear and true from the parties or counsel and any prevarication will be scorned at by him. In deciding the issues in a case between party and party, when technicalities of law or procedure bound him to decide in a way which was not in the larger interests of truth and justice, his Lordship made no secret of it, in open Court or in his judgments. His clinching comments, terse logic and close reasoning, effective and apt phraseology and breaking the shackles of iniquitous and obsolete precedents made many of his judgments pieces of literary art. He is too large for the routine hack and his judgments are for critical times and large issues of awakening the consciousness of the people. It is a providential coincidence that his Lordship was on the Bench at a time when the Constitution of Free India was put on the statute-book and his Lordship was for a long time in charge of the Writ Bench where he had been virtually a judicial corrective on the administration. How many varieties of cases have come up before him and how many instances of arbitrariness of the executive or the transgression of the law by the quasi-judicial tribunals has he been rectifying these years. His comments on quasi-judicial tribunals getting out of their moorings in quest of social justice have almost become classic. Reading through his judgments one is reminded of the famous triumvirate of the American Supreme Court, Holmes, Cardozo and Brandeis.

On the last day of August, 1960, the Acting Advocate-General, Madras, Sri P. S. Kailasam, bade farewell to his Lordship who sat on the Bench for the last day as he was availing himself of leave before retirement. The Court-hall where the function was held and the corridors round the hall were filled by members of the Bar, the public and Officers of the High Court. After recounting the early career of his Lordship, the Acting Advocate-General said: "During your tenure as High Court Judge you were uniformly courteous and extremely pleasant to the members of the Bar, who felt thoroughly at home in your

Court. The entire Bar can testify that your Lordship made no distinction between different members of the Bar and always treated juniors and seniors alike with the result that every one who came out of your Court had the satisfaction that he had his full say ". At the farewell function of the Advocates' Association, Mr. T. M. Krishnaswami Ayyar, President of the Association, said " In all these fifty-three years I have been at the Bar, I have not witnessed such a unified, affectionate and respectful reception as the present one. You are essentially a Judge, a great Judge and one of the greatest Judges that ever sat on any Bench of any High Court in any country. Members of the Bar experienced at your hands administration of justice as it ought to be and they all felt drawn to you both with affection and with respect ". Great compliments indeed but richly deserved ones at that.

Thanking the Advocate-General for the kind references made by him on behalf of the Bar, his Lordship, with his characteristic humour, referred to his early life and career. His Lordship said that early in his career he has been advised that Judicial Officers had no business to lose their temper, whatever be the provocation. But being human as they are, if by chance they lost their temper, they should not write their judgment that day but allow the temper to cool off and write the judgment the next day. Commenting on the trends in recent times his Lordship said that the need for an independent judiciary was more imperative now than it had been in the past. His Lordship said there were several reasons for this. Formerly the State was simply a leviathan. If they fell foul of it, the chances were that in nine cases out of ten they got the worst of the encounter. But then, so long as they minded their own business. the leviathan left them alone. But now all that had been changed. His Lordship added : " There are those, who claim that the State is becoming a benevolent Providence which will look after its citizens from even before they are born till after their mortal remains are finally disposed of. On the other hand, there are those, who allege that the State is becoming an octopus throwing out new tentacles day after day and that at the present pace, it will not be long before the citizen ceases to be a human being. On this controversy, I express no opinion and, in any case, the present is not a suitable occasion for that. But one thing is clear. Providence or octopus, the State is spreading itself out in all directions. Every session of the Legislature, State and Central, produces a crop of statutes, which it is by no means easy even for those who had full facilities in that respect to keep abreast of. And then there are the multitudinous rules, regulations, notifications and instructions to keep track of which is a whole-time job. Now every statute, every rule, every regulation and every notification produces its crop of disputes. In other words, the occasions when the citizen may find his views about the law to be at variance with those in whom the executive powers of the State happen for the time to be vested, are increased many fold."

" When the British ruled the land," his Lordship said, "except in cases where imperial or racial considerations were involved, officers vested with executive authority were able to deal with the issues before them in an objective fashion. He was by no means sure that they could say that now. At the back of their minds, consciously or unconsciously, but always effectively bearing on the questions before them, were electioneering considerations and party affiliations. This is perhaps inevitable in a democracy ; but as I see it that is the more reason why a citizen

who is prejudicially affected by a decision made by the executive authority should be able to invoke the assistance of a Tribunal that would not be influenced by such consideration. I would only emphasise that with every expansion of State activity, the need for judicial protection of the citizen increases. A learned critic of present-day conditions in one of the States of the British Commonwealth of Nations made this comment in an article he contributed to the Modern Law Review ' the sensitiveness of Judges to ministerial susceptibilities is ominous '. I pray that the time will never come when it will be possible for a fair-minded critic of our institutions to make such a comment on the Judges of this Court or of any other Court in this land ".

His Lordship expressed his thanks for the help he had received from the Chief Justice and the other Judges of the High Court. " From the Registrar down to the humblest clerk, all had striven to help me. Without implying any disparagement to the others, I would make special mention of the Bench-clerks and Shorthand writers because it was with them that my contacts has been more constant and intimate. I would give them my special thanks " concluded his Lordship. When his Lordship took leave of those present their affection and regard for him was so spontaneous and visible that they lined up the corridors on both sides, in depths of three and four, and greeted him as he left for his Chambers.

Thanking the President of the Advocates' Association for his words of high praise his Lordship said that his first fifteen years of life was shaped in the background of the old traditional values and norms of conduct, which are being rapidly submerged by the new urban civilisation. His Lordship said that in the field in which he worked he attempted to adopt the high standard that was expected of him and he was gratified in the knowledge that he is retiring with the good-will and esteem of those associated with him and who are in the best position to decide. His Lordship took leave of the members of the Bar and the staff of the High Court as he was proceeding on leave preparatory to his retirement.

We offer our felicitations to his Lordship on his illustrious career and wish him a long and happy life.

NEW JUDGES OF THE MADRAS HIGH COURT.

Three more Judges have been appointed to the Madras High Court and they have assumed charge of their office this week. The High Court Bench has now a complement of twelve Judges and this will go a long way to relieve the arrears of work in the Court and achieve the cherished objective of the public and the Government that cases should be disposed of expeditiously. The routine class of cases or appeals may probably be a little less before the High Court in times to come due to the enhancement of the monetary limit of the appellate jurisdiction of the District Courts. But then the enormous growth of legislation in recent years, which is in itself new and unprecedented in its content and scope, has in turn given rise to a volume of litigation which has to be tackled on first principles. More than at any other period in the past the State now figures very much in Courts in their administrative and trading spheres. The citizen is more often at a disadvantage when he has to prosecute a cause against the State. Such causes cannot be rushed through and the High Court of the State should have its full strength to deal with these matters effectively. There is also now the widespread belief among the members of the Bar that original suits of over a specified monetary value may be taken over to the original side of the High Court. We welcome the new appointments which are both timely and necessary.

It will indeed be superfluous to introduce the new Judges to the Madras Bar and the public. They have all been in active service in one sphere or other in Madras for the past several years and have become familiar to one and all.

HON'BLE MR. JUSTICE T. VENKATADRI.

Sri T. Venkatadri, a senior member of the Madras Bar, has the unique distinction of having been trained under a family of eminent advocates who were all elevated to the Bench. Born in 1906, in North Arcot District of Madras he graduated from the Presidency College, Madras, and took his Law Degree from the Madras Law College. He entered as an apprentice the chambers of Sri P.Venktaramana Rao who later became an illustrious Judge of the Madras High Court and subsquently the Chief Justice of the Mysore High Court. Enrolled in 1934, he worked as a Junior under Sri P.V. Rajamannar, our present Chief Justice and Sri K. Subba Rao, who became judge of the Madras High Court, Chief Justice of Andhra Pradesh High Court and at present a Judge of the Supreme Court of India, who were then commanding excellent work on the Appellate Side of the Madras High Court. Later, he worked in partnership with Sri C. A. Vaidyalingam, who later became a Judge of the Kerala High Court.

With this tradition and opportunity in his legal career Sri Venkatadri built up a lucrative and class work on the Appellate Side and has won many laurels as evidenced by the large number of reported cases wherein he appeared. His services were availed of by several statutory corporations and incorporated companies such as the Madras State Electricity Board, Madras Industrial Investment Corporation, Ltd., Egmore Benefit Fund Society to mention a few.

Though his whole time was taken up in the profession Sri Venkatadri is of the clubbable class and is an entertaining conversationist and a good mixer. A member of the Cosmopolitan and the Gymkhana Clubs, he has a large circle of friends. He is associated with charitable organisations like the Chennapuri Annadhana Samajam and the Kotta Varadappa Naidu's Charities.

HON'BLE MR. JUSTICE P. RAMAKRISHNA IYER.

Sri P. Ramakrishna Iyer comes to the Bench from the reputed Indian Civil Service. Born in 1908, in the Kanyakumari District in the extreme South, he had his early education and post-graduate study in Trivandrum and passed out of the Maharajah's College of Science, Trivandrum, in 1925 in Mathematics Honours. He served for some time as Lecturer in the Travancore Educational Service from whence he passed the open competitive examination for the I.C.S. held in Delhi being placed second in the list. After further training between 1930 and 1932 at the Cambridge University, his first assignment was in 1932 as Assistant Collector of Chittoor, in the then composite Madras State. In subsequent years he was Under Secretary to the Government of Madras and served as Joint and Additional District Magistrate in several Districts. In 1941 he joined the judicial wing and had his training in Tinnevelly District under Sri P.V. Balakrishna Iyer, I.C.S., who was then the District Judge and who retired quite recently from the Bench of the Madras High Court. First posted as District and Sessions Judge of Guntur he later served in that capacity in the Districts of Ramnad, South Arcot, Chittoor and Madura. In 1953 he became the Chief Presidency Magistrate, Madras and later in 1955 was appointed Chairman of the Sales-tax Appellate Tribunal. He was appointed in 1959 as a Special Judge to try the Ramanathapuram rioting cases and was a member of the State Pay Commission.

Sri Ramakrishna Iyer is a tennis enthusiast and is a longstanding member of the Presidency Club. Widely read, and proficient in Sanskrit he is of a scholarly turn of mind.

HON'BLE MR. JUSTICE P. S. KAILASAM.

Sri P. S. Kailasam is well-known to the members of the Bar and the public of Madras. Of a smiling disposition, soft in voice and dignified and quiet in bearing, he endears himself to everyone with whom he comes into contact. Born in Salem District in 1915 in a family of landed aristocracy he had his early education in the Ramakrishna Mission Home and the P. S. High School and had earned the reputation of being a model student in these institutions. Graduating from the Presidency College, Madras, he took the Law Degree from the Madras Law College. He was enrolled as an Advocate of the Madras High Court in 1938 and was a junior under the late Sri V. L. Ethiraj, the well-known leader of the Madras Bar on the Criminal Side. Later he joined the chambers of Sri N. Somasundaram, who rose to the Bench. He commanded an extensive and lucrative practice on the Criminal Appellate side in the High Court. It came as no surprise when he was chosen to be the Public Prosecutor of Madras in January, 1956. His advocacy was neat and sharp and in the short period of service as Public Prosecutor he earned the great reputation of his illustrious master, Sri V. L. Ethiraj, of being an able and impartial prosecutor and commanded regard and respect from the Bench and Bar alike. He was associated with our Madras Law Journal (Criminal) as a member of the Editorial Board. Quite sociable by nature Sri Kailasam is a familiar figure in social gatherings and club functions.

Their Lordships took their seats on the Bench on 20th October, 1960 and were given a warm welcome by senior members of the Bar.

We offer their Lordships our sincere felicitations on their elevation to the Bench and wish them all success.

[Supreme Court.]

S. J. Imam, A. K. Sarkar and Raghubar Dayal, JJ.
27th September, 1960.

Padam Sen *v.* State of Uttar Pradesh.
Cr. A. No. 149 of 1958.

Penal Code (XLV of 1860), *section* 165-*A—Scope—Civil Procedure Code (V of* 1908), *sections* 75 *and* 151 *and Order* 26—*Commissioner appointed by Court without power—Not a 'public servant'—Abetment of—Not offence under section* 165-*A, Indian Penal Code.*

The Additional Munsif had no power to appoint a Commissioner to seize the books and the order passed by him was one without jurisdiction and as such was null and void. In the present case as there was neither an existing Commissioner nor had the Additional Munsif power to appoint him, the Commissioner could not be held to be a public servant. The appellants were, therefore, held not to have committed an offence under section 165-A, Indian Penal Code (abetement of taking illegal gratification by a public servant.)

N. C. Chatterjee, for Appellants.

G. C. Mathur, for Respondent.

G.R. — *Appeal allowed.*

[Supreme Court.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
3rd October, 1960.

State of Madhya Pradesh *v.* Baldeo Prasad.
C.A. No. 271 of 1957.

Central Provinces and Berar Gundas Act (as amended by the Madhya Pradesh Act XLIX of 1950)—*Article* 19 (1) (d) (e) *of the Constitution.*

The definition of the word "Goonda" in the C. P. and Berar Goondas Act did not afford any guidance to the District Magistrate in deciding which citizen could be put under that category. The result of these infirmities, was that the authority concerned could treat any citizen it liked as a " goonda " and place restrictions on his fundamental rights.

" The restrictions which the legislation allows to be imposed on the exercise of the fundamental right of a citizen guaranteed by Article 19 (1) (*d*) and (*e*) must, in the circumstances, be held to be unreasonable ".

M. Addikari, Advocate-General, for Appellant.

R. Patnayak, for Respondent.

G.R. — *Appeal dismissed.*

[Supreme Court.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
3rd October, 1960.

Madhorao Phalke *v.* State of Madhya Pradesh.
C.A. No. 84 of 1954.

" *Kalam Bandis* "—*Whether Rules or Regulations having force of law in the State of Gwalior.*

The main question for decision was whether the Kalam Bandis on which the appellant bases his right can be said to have been rules or regulations which had the force of law in the State of Gwalior. The Court said that under an absolute monarchy orders issued by the Ruler would have the force of law and would govern the rights of the citizens. On considering the character of the orders contained in these Kalam Bandis the Court held that they were at least regulations having the force of law.

B. Sen, for Appellant.

M. Adhikari, Advocate-General, for Respondent.

G.R. — *Appeal allowed.*

M—N R C

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
3rd October, 1960.

Gangadharrao Narayanrao *v.* State of Bombay.
C.A. Nos. 155-160 of 1956.

Bombay Personal Inams Abolition Act XLII of 1953—*Bombay Acts II and VII of* 1863—*Articles* 31 *and* 31-*A of the Constitution.*

" Contention of the appellants therefore that Inams dealt with by the Act are not covered by the expression " estate " in Article 31-A of the Constitution fails. Their further contentions that their right to retain the difference between full assessment and quit rent is not a right in any estate also fails. The Bombay Personal Inams Abolition Act therefore when it extinguishes or modifies the right of Inamdars in the Inam estates is clearly protected by Article 31-A of the Constitution—

" The next contention is that the Act does not provide for compensation and it is therefore *ultra vires* in view of Article 31 of the Constitution. We find, however, that the Act has provided for compensation under section 10 so far as that part of Inam lands which are vested in the State by section 7 are concerned. Further section 17 provides for compensation in a possible case where any thing has been left out by section 7 and the Inamdar is entitled to compensation for it ".

" It is however clear that Article 31-A saves the Act from any attack under Article 31 which is the only Article providing for compensation. In this view of the matter the Constitutionality of the Act cannot be assailed on the ground that it provides no compensation for extinction of certain rights."

Purushotam Tricumdas, for Appellants.

H. N. Sanyal, Additional Solicitor-General of India, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao, and K. N. Wanchoo, JJ.
3rd October, 1960.

Rangildas Varajdas Khandwala *v.* Collector of Surat.
C.A. No. 6 of 1959.

Bombay Personal Inams Abolition Act XLII of 1953—*Bombay Acts II and VII of* 1863—*Articles* 294 (b) 31 *and* 31-*A of the Constitution.*

Constitutionality of the Bombay Personal Inams Abolition Act is covered by Judgment in C.A. Nos. 155-160 of 1956. The only fresh point is that in view of Article 294 (*b*) of the Constitution and in view of the fact that the holder was given a *sanad* when his Inam was recognised it was not open to the State Government to enact a law which would in any way vary the terms of the *sanad.* This argument based on the immutability of the *sanads* was rejected by the Federal Court in 1946 F.C.R. 111 and (2) has also been rejected by this Court in 1955 S.C.J. 472 : (1955) 2 S.C.R. 164. We also reject it for reasons given in the two cases cited. The challenge therefore to the Constitutionality of the Act fails in the present appeal also.

" It is not in dispute that there has in fact been no assessment under Chapter VIII-A in this case. We are therefore of opinion that as the land in this case was not wholly exempt from revenue and as in fact no assessment has been fixed on this land under Chapter VIII-A, section 52 would apply and the Collector would have power to make an assessment in the manner provided by that section ".

D. P. B. Padye, for Appellant.

H. N. Sanyal, Additional Solicitor-General of India, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
14th October, 1960.

State of Bihar *v.* Kirpa Shankar Jaiwal.
Cr.A. No. 83/59.

Industrial Disputes Act (XIV of 1947), sections 11 (2), 12, 22, 20, *and* 18 (3) (*a*) & (*b*)—*Scope.*

[Following their own Judgment reported in (1960) 1 S.C.R. 726 at 736: 1960 S.C.J. 91, the Court *held*, "This shows that all disputes between the parties have been settled and workmen have been reinstated". In view of this in the words of Subba Rao, J., in the *State of Bihar* v. *Hira Lal Kejriwal and another.* "Public interest does not require that the stale matter should be resuscitated". Therefore we do not think it necessary to interfere under Article 136 with the Order of the High Court." Other cases considered: (1960) 2 L.L.J. 37 at 38; 1959 S.C. 841 : 1959 S.C.J. 909.

D. P. Singh, for Appellant.

C. P. Lall, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, K. C. Das Gupta, J. C. Shah and N. Rajagopala Ayyangar, JJ.
18th October, 1960.

Nathmal Tolaram *v.* Supdt. of Taxes.
C.A. No. 196 of 1958.

Assam Sales-tax Act (XVII of 1947), *section* 2 (12), *Explanation.*

The High Court's answer to the question referred to it was :—"The transaction not being a sale within the meaning of sub-section (12) of section 2 of the Act the consignments are not taxable".

The Supreme Court *held* : "That any further proceedings for assessment had to be taken under some authority of law. In the present case the High Court did not make any such direction nor was there any other legal authority".

Sukumar Mitter, for Appellant.

Veda Vyasa, for Respondents.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. J. Imam, A. K. Sarkar and Raghubar Dayal, JJ.
19th October, 1960.

Th. Kesari Singh *v.* State of Rajasthan.
C.A. No. 277 of 1957.

Marwar Tenancy Act (*XXXIX of* 1949)—*section* 85—*Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, I of* 1951—*Notification under section* 85 *of the Marwar Tenancy Act—Its vires challenged—Temporary legislation.*

"We have given anxious consideration to this question but have not been able to agree with the view taken by the High Court. It seems to us that the Rules made under sections 85 of the Tenancy Act had not laid down any special procedure. The only rule relevant in this connection is rule 34 to which we have earlier referred. All that the rule does is to require the Deputy Commissioner to check the list, a duty which under the section itself he has to perform and also makes it necessary for him to examine the patwari for the purpose. The rules did not indicate how

the application is to be heard, *i.e.*, whether *ex parte* or on notice. In our view, for the reasons aforesaid, the application under that section was properly and correctly heard and determined without notice to the tenants. Such hearing does not disclose any error at all.

"In our view steps can be taken under section 85 of the Marwar Tenancy Act, (XXXIX of 1949) by the appropriate Revenue Officer for realisation of rent found due as arears of land revenue even after the notification under that section has been rescinded."

As regards the arguments that the Notification under section 85 of the Marwar Tenancy Act is *ultra vires*, we do not allow this point to be raised here for the first time when it was not taken up in the High Court.

N. C. Chatterjee, Suresh Aggrawal, and *Ganpat Rai*, for Appellant.

R. K. Rastogi and *K. L. Mehta*, for Respondents.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

S. K. Das and J. C. Shah, JJ.
25th October, 1960.

P. C. Joshi *v.* The State of U. P.
Cr.A. No. 130 of 1960.

Penal Code (XLV of 1860), *section* 500—*Sanction for the prosecution—Sections* 198 *and* 198-*B—Scope.*

Section 198-B was not intended to be supplementary but provided only an alternative remedy in the case of a person like the Chief Minister or other officials set out in section 198-B.

"There can be no doubt that in a democratic set-up, in order to maintain purity of public behaviour and administration, charges of improper conduct against persons in the second class, in so far as such charges relate to the discharge of their public functions should be investigated.

"It is also in the public interest that in vindicating his character or conduct, the person defamed should not ordinarily be called upon to bear the burden of what may turn out to be an expensive and long drawn out proceeding, nor for obvious reasons should he have control over the proceedings".

N. C. Chatterjee, for Appellant.

G. S. Pathak, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gagendragadkar, A. K. Sarkar
K. Subba Rao, K. N. Wanchoo and
J. R. Mudholkar, JJ.
26th October, 1960.

District Board of Ghazipur *v.* Shri Lakshmi Narain Sharma.
C.A. No 372 of 1956.

U. P. Rice and Dal Control Order—Pure Food Act—U. P. Panchayat Raj Act—District Board's power to regulate trade.

The fact that the respondent had paid the fees under the Pure Food Act and the U. P. Rice and Dal Mills Control Order could not absolve him from obtaining a licence under the District Board Act. The U. P. Panchayat Raj Act does not divest District Boards of their power to regulate trade.

G. C. Mathur, for Appellant.

G. P. Singh, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT].

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao, and K. N. Wanchoo, JJ.
27th October, 1960.

Makhanlal Malhotra *v.* Union of India.
W. P. No. 44 of 1958.

Displaced Persons (Claims) Supplementary Act, rule 5—*Displaced Persons Compensation and Rehabilitation) Act, rule* 65—*Article* 31 (5) (b) (*iii*) *of the Constitution.*

"The object of the impugned provisions is to rehabilitate the evacuees on an equitable basis. To implement the scheme of rehabilitation the evacuee law has classified evacuees under different categories. Broadly speaking the main division is between persons who were residing in Pakistan in rural areas with agriculture as their avocation and those who were residing in urban areas in Pakistan. This classification has certainly a reasonable relation to the object of the rehabilitation.

"The clasification of rural and urban property and of rural houses made under the rules in question was not arbitrary and was based on sound and equitable principles. It could not be therefore said that the rules suffered from infirmity on the ground of discrimination".

The rules had only incorporated the provisions of the inter-Dominion Agreement between India and Pakistan which had received recognition in Article 31 (5) (*b*) (*iii*) of the Constitution.

Naunit Lal, for Petitioners.

H. N. Sanyal, Additional Solicitor-General of India, for Respondent.

G.R. *Petition dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
27th October, 1960.

Sarat Chandra Rabha *v.* Khagendranath Nath.
C.A. No. 375 of 1959.

Representation of People Act (XLIII of 1951), section 7—*Criminal Procedure Code (V of 1898), section* 401—*Remission of sentence.*

"We cannot agree that remission by the Government has the same effect as the order passed by the Court of law in appeal or revision. Where a sentence imposed by a Court is remitted in part under section 401 of the Code of Criminal Procedure that has not the same effect in law of reducing the sentence imposed by the Court, though in effect the result may be that the convicted person suffers less imprisonment than that imposed by the Court".

The order of remission affects the execution of the sentence imposed by the Court but does not affect the sentence as such, which remains what it was in spite of the order of remission. We are therefore of the opinion that the terms of section 7 (*b*) would be satisfied in the present case and the appellant would be disqualified as 5 years had not elapsed 'since his release' on the day of filing the nomination papers.

L. K. Jha, for Appellants.

G. S. Pathak, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, K. C. Das Gupta, J. C. Shah and N. Rajagopala Ayyangar, JJ.
28th October, 1960.

R. P. Kapur. *v.* Sardar Pratap Singh Kairon.
W. P. 59 No. of 1960.

Constitution of India (1950), *Articles* 14 *and* 32—*Validity of the investigations by the Police.*

R. P. Kapur and others, the petitioners in the case, are obviously suffering from a sense of grievance that they have not had a fair deal. We have held that there is no legal justification for that grievance but in executive as well as judicial administration justice must not only be done but it must appear that justice is being done. An affidavit from the Chief Minister would have cleared much of the doubt.

" These are matters on which the Chief Minister alone is in a position to enlighten us. He owes a duty to this Court to file an affidavit stating what the correct position is so far as he remembers it. This is not a case where the refutation should have been left to the Secretaries and other Officers who could only speak from the records and were not in a position to say why the Chief Minister passed certain orders."

The petitioners had failed to establish that the procedure adopted was in fact illegal or that they had been unfairly discriminated against.

A. S. R. Chari, for Petitioner.

S. M. Sikri, Advocate-General, Punjab, for Respondents.

G.R. *Petition dismissed.*

Rajamannar, C.J., and Veeraswami, J.
24th June, 1960.

Alagammai Achi *v.* Viruthagiri Chettiar.
Appeal No. 446 of 1955.

Banker—Nattukottai Chetti community—Maral or Maraldar—Implication of.

The word ' maral ' literally means ' through ' and in the banking business of Nattukottai Chetti community of Southern India it generally conveys the idea that the deposit has been made on the recommendation or introduction of the person named as ' maraldar '. The maraldar is not a trustee or agent and the money deposited belongs to the 'vilasamdar' and not to the maraldar, though sometimes the word ' maral ' may include authority for the maraldar himself to collect or operate on the deposit with or without the consent of the vilasamdar. Where the intention is that the maraldar should serve as a check, the vilasamdar may not be able to collect or operate on the deposit without the concurrence of the maraldar. In spite of these general features which characterise a maraldar, the precise meaning of ' maral ' or ' maraldar ' in a given case, and his powers and responsibilities are essentially a question of fact depending on the intention of the parties to be gathered from the terms of the deposit and other relevant facts including the conduct of the parties.

A. V. Narayanaswami Aiyar and *R. Venkatachalam*, for Appellants.

R. Gopalaswami Ayyangar and *V. Ramaswami Ayyar*, for Respondents.

R.M. *Appeal dismissed.*

Jagadisan, J.
11th July, 1960.

Subbaraya Chettiar *v.* Vaidyanatha Mudaliar.
S.A. No. 304 of 1958.

Madras Agriculturists' Relief Act (IV of 1938), *section* 13—*Scaling down of debts under—Re-opening of transaction—Scope of.*

Section 13 of the Madras Agriculturists' Relief Act, 1938, is a specific provision with regard to debts incurred after the Act and there is no provision under it to scale down debts by tracing the debt back to its inception as in cases under sections 8 and 9 of the Act. Hence where a debt incurred for the first time after the Act has been renewed several times by adding interest in excess of the statutory rate in a suit brought on the last promissory note the debtor cannot claim to reopen the last transaction and get the interest calculated on the original debt at the statutory rate.

(1958) 2 M.L.J. 568 (F.B.), referred.

V. C. Viraraghavan, for Appellant.

M. Natesan, for Respondent.

R.M. *Appeal allowed.*

Jagadisan, J.
27th July, 1960.

Subramaniam Chettiar *v.* Anandavalli Achi.
S.A. No. 531 of 1958.

Limitation Act (IX of 1908), *section* 10—*Scope and applicability—Trust to which it could apply.*

Section 10 of the Limitation Act which provides specifically for cases of following trust properties in the hands of persons in whom it is vested, contemplates the existence of a valid trust. The 'vesting' contemplated in the section is nothing more than the transfer of the trust estate which is also one of the essentials of a complete and valid trust. The section could be invoked only in cases of what are called 'express trusts' and not in cases of constructive or resulting trust which arise by operation of law.

(1937) M.W.N. 493, approved.

I.L.R. 1946 Mad. 429, doubted.

T. Venkatadri, for Appellant.

D. Ramaswami Ayyangar and *S. Natarajan*, for Respondents.

R.M. *Appeal dismissed.*

Rajamannar, C.J., and Veeraswami, J.
4th August, 1960.

Umar *v.* Mohd. Sahul Hameed.
W.A. No. 64 of 1960.

Madras District Muncipalities Act (V of 1920)—*Election rules—Power of Election Officer to re-count and re-scrutinise votes.*

Obiter—In view of the absence of any statutory provision in the rules framed under the Madras District Muncipalities Act it is doubtful whether an election officer acting under the rules has a right to re-scrutinise and reject the votes, originally counted as valid, at the time of a recount, which also is not authorised by the statutory rules.

V. V. Raghavan and *N. M. Md. Khan*, for Appellant.

S. Mohan Kumaramangalam and *T. Martin*, for Respondent.

R.M. *Appeal dismissed.*

Jagadisan, J. Seth Mengraj *v.* S.M.E.S. Corporation.
5th August, 1960. S.A. No. 496 of 1958.

Companies Act (VII of 1913), section 30 (2)—'Person'—If includes a partnership firm.

Indian Partnership Act (IX of 1932), section 4—Person—Meaning.

The word 'person' in section 4 of the Indian Partnership Act, contemplates only natural or legal persons and a firm is not such a person and cannot enter into partnership with another firm or individual.

A firm is not a person within the meaning of section 30 (2) of the Indian Companies Act, 1913 (now repealed by Act I of 1956).

S. Amudachari and *A. V. Raghavan*, for Appellant.

R. Narasimhachari, N. Varadarajan, V. Seshadri, T. R. Mani and *A. Sundaram Ayyar*, for Respondents.

R.M. *Appeal dismissed.*

Veeraswami, J. Somasundaram *v.* Ramanathan.
11th August, 1960. S.A. Nos. 727 and 728 of 1958.

Limitation Act (IX of 1908), Article 116—Document registered—Meaning of.

The word 'registered' in Article 116 of the Limitation Act should be construed according to the definition of the term in the General Clauses Act, *viz.*, registered in India under the law for the time being in force for the registration of documents. Since Burma has ceased to be part of India since 1st April, 1937, a document registered in Burma after that date will not be a document registered within the meaning of Article 116 of the Limitation Act.

M. Ramachandran, T. V. Balakrishnan and *T. S. Srinivasan*, for Appellants.

K. Parasaran and *V. Meenakshisundaram*, for Respondents.

R.M. *Appeal allowed.*

Balakrishna Iyer and Jagadisan, JJ. Palanichami *v.* Arumugha.
12th August, 1960. Appeal No. 44 of 1957.

Registration Act (XVI of 1908), section 49 (a) & (c)—Scope of—Unregistered partition deed—If admissible to prove the joint family properties.

Section 49 of the Indian Registration Act imposes only a limited ban on the admissibility of documents which require to be compulsorily registered. An unregistered partition deed entered into between the members of a Hindu joint family can be relied upon by the Court for the purpose of ascertaining the joint family properties available for division among the members.

T. M. Krishnaswami Ayyar and *A. Balasubramanian*, for Appellant.

M. Natesan, for Respondent.

R.M. *Appeal dismissed.*

Rajamannar, C.J., and Veeraswami, J. Seethalakshmi Ammal *v.* Krishnaswami Rao.
25th August, 1960. S.A. No. 702 of 1957.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948)—Charge created on private lands in an estate for unpaid purchase money—Effect on after notification under the Act.

Under section 12 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, the landholder is entitled to a ryotwari patta in respect of his private lands. Hence a charge created for unpaid purchase price will enure over

such lands and the charge holder cannot be deprived of his security over the lands even though they have ceased to be private lands but continue to be the property of the landholder. The ownership of the private lands continue with the erstwhile zamindar with a change in the nature of the tenure." Hence the charge would continue to subsist in respect of the private lands for which under section 12 of the Act a ryotwari patta is issued to the landholder.

R. Rangachari, for Appellant.

V. Vedantachari and *T. Rangaswami Ayyangar*, for Respondent.

R.M. *Appeal dismissed.*

Ramachandra Iyer, J.
25th August, 1960.

Indian Metal and Metallurgical Corporation *v.* Industrial Tribunal.
W.P. Nos. 925, and 1002 to 1004 of 1958.

Industrial Disputes Act (XIV of 1947), section 33 (2)—Application for sanction under—Duty of tribunal—Disciplinary action—Enquiry by management—Procedure of—"Strike"—What is.

An Industrial Tribunal is bound to accord its sanction to an application by the management under section 33 (2) of the Industrial Disputes Act if a case is made out for such sanction by the Management. Refusal to do so will amount to refusal to exercise its jurisdiction and such an order of the tribunal is liable to be set aside under Article 226 of the Constitution of India.

In cases of domestic inquiries by an employer against his employee, whose relationship is contractual and not governed by statute, the rule that a prosecutor cannot himself be a judge cannot apply in all its rigour, so long as the proceedings are not vitiated by unfair practices or want of good faith, etc. In cases of inquiry conducted by an employer against an employee for misconduct it may be that the misconduct charged against the employees might be one known to the employer himself or it may be brought to his notice by somebody else. In either case the employer would be entitled to hold an enquiry and punish the employee if he finds the charge proved. The fact that the employee had personal knowledge of the misconduct charged does not disqualify him from holding the enquiry himself nor is it necessary in such cases that the employer should first examine himself. Except in cases of *mala fides* or where the charge is based on information supplied by another person it is needless to let in formal evidence of the misconduct where it is committed in the presence of the employer and the charge is clearly brought to the notice of the employee.

A mere abstention from work by the employees in concert will not in itself amount to a strike. In order to constitute a strike there should be an animus against the employer. Though a strike need not be for getting benefits to the strikers themselves, the object should be to bring pressure on the management. Where workers abstain from work out of sympathy to a cause wholly unrelated to their employment is will not amount to strike, though it might amount to a misconduct of wilful abstention from work.

M. R. Narayanaswami and *N. Kannan*, for Petitioner.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Respondent.

R.M. *Rule absolute.*

Srinivasan, J. Alla Pichai Rowther *v.* Chokkanathaswami Temple.
2nd September, 1960. A.A.O. No. 255 of 1959.

Madras Estates Supplementary Act (*XXX of* 1956), *section* 10—*Bar of jurisdiction of civil Courts under—Scope of.*

Section 10 of the Madras Act, 1956, has to be read in the light of the other provisions of the Act, and a civil Court will have jurisdiction to deal with any matter unless it is expressly deprived of it. The absence of any other Tribunal which can adjudicate upon a particular question will clearly show that the civil Court will have jurisdiction to deal with it. The bar of jurisdiction conferred under section 10 of the Act is not intended to be operative beyond the period when the Tribunals appointed under the Act could be properlv seized of the matter. If resort could not be had to the tribunals under the Act for a certain relief, the civil Court will be competent to determine the quection.

A. Sundaram Ayyar and *P. Balasubramaniam,* for Appellant.

R. Kesava Ayyangar, for Respondent.

R.M. *Appeal dismissed.*

Veeraswami, J. Sundarambal *v.* Suppiah Pillai.
9th September, 1960 S.A. No. 957 of 1958.

Hindu Adoption and Maintenance Act (*LXXVIII of* 1956), *sections* 4, 20 *and* 24—*Effect of on rights under prior Hindu law and usage.*

The Hindu Adoption and Maintenance Act, 1956, is an amending and codifying legislation and has an overriding effect and prevails over all other laws or usages relating to maintenance among Hindus for which provision is made under the Act. Hence on and from the date on which the Act came into force, *viz.*, 21st December, 1956, the liability of a Hindu father to provide for the maintenance of his daughter will be governed by the statutory provsion under which the right to claim maintenance will cease on conversion of the daughter to another religion. The right to claim maintenance being a personal right, a person who has lost the right as a result of conversion to another religion cannot sue for past maintenance either, after the coming into force of the Act.

K. V. Srinivasa Ayyar, for Appellant.

N. S. Srinivasan, for Respondent.

R.M. *Appeal dismissed.*